

BENTON COUNTY ORDINANCE # 16

TITLE: AN ORDINANCE IMPLEMENTING THIS COUNTY'S RESPONSIBILITIES IN ISSUING SITING PERMITS FOR SOLID WASTE LANDFILLS; PROVIDING FOR PROPER OPERATION OF THESE FACILITIES, CLOSURE OF THESE FACILITIES, WASTE REDUCTION AT THE SOURCE, PROTECTION OF THE ENVIRONMENT AND GROUND WATER, ASSESSMENT OF FEES, AND PENALTIES FOR VIOLATIONS.

BE IT ORDAINED BY THE BENTON COUNTY BOARD OF SUPERVISORS:

Section 1. PURPOSE. The purpose of this ordinance is to implement this county's responsibilities to issue siting permits under Section 455B.305A, The Code for solid waste landfills; to regulate their operation as required in Section 455B.302, The Code; to ensure the reduction of waste deposited in solid waste landfills as provided in chapter 455D, The Code; and to protect the ground water of this county as provided in Chapter 455E, The Code.

Section 2. EXEMPTION. This ordinance does not apply to presently existing and operating sites when they operate in accordance with the intended use of their original permit.

Section 3. DECLARATION OF POLICY. The Board of Supervisors has the obligation to provide for a supply of safe and potable water for its residents and to otherwise protect the environment of this county for the health, safety, and welfare of the residents. Disposal of solid waste in a sanitary landfill has the potential to contaminate ground water and otherwise damage the environment. Landfills are, thus, the least desirable way to dispose of solid waste. In order to fulfill its obligation, the Board finds that this ordinance is necessary to regulate the siting, establishment, and operation of sanitary landfills, and other sanitary disposal projects.

Section 4. DEFINITIONS. The following terms used in this ordinance shall mean:

- a. Municipality means a county or city.
- b. Joint Municipal Enterprise (JME) means an association pursuant to Chapter 28E, The Code, by municipalities to implement any of the purposes of Chapters 455B, 455D, and 455E, The Code.
- c. Joint Municipal Private Enterprise (JMPE) means an association pursuant to Chapter 28E, The Code by municipalities and private organizations, whether for profit or non-profit, to implement any of the purposes of chapters 455B, 455D, and 455E, The Code.
- d. Private organization means any entity whether for profit or non-profit, other than a municipality.
- e. Owner means a person, firm, corporation, or other entity, jointly and severally, that has an interest in real property that is a sanitary landfill or other sanitary disposal project.

f. Operator means a person, firm, corporation or other entity, jointly and severally, which operates a sanitary landfill or sanitary disposal project.

g. Waste Provider means a municipality and any other person, firm, corporation, or other entity that provides waste to a sanitary landfill or sanitary disposal project.

h. Rules and regulations mean any applicable rules, regulations, and directives of the Iowa Department of Natural Resources (DNR), the Federal Environmental Protection Agency (EPA), and this county.

i. Transfer Station means a place where solid waste is temporarily collected, stored, or combined with other solid waste for the purpose of transportation to a sanitary landfill or other sanitary disposal project.

j. Board means Benton County Board of Supervisors.

k. The definition of terms as defined in Section 455B.301, 455D.1, and 455E.2, The Code shall have the same meaning as in this ordinance.

Section 5. Acts Prohibited. It shall be unlawful for any person, firm, corporation or other entity to place, discard or dispose of solid waste as defined in Section 455B.301(20), The Code at any place within this county unless the Board of Supervisors shall have issued a siting permit or a transfer station permit pursuant to this ordinance. Permits for mobile or stationary incinerators shall also comply with this ordinance.

Section 6. Application for Permit. Any person, firm, corporation, municipality, JME, JMPE, private organization or other entity desirous of placing, discarding, or disposing of solid waste within this county outside the corporate limits of a city may apply to the Board of Supervisors for a permit to engage in such activity. The applicant shall in the application or otherwise provide the Board with the following:

1. The name, address, social security number or federal identification number of all parties with an interest in the real estate to be utilized. If a corporation (profit or non-profit), the articles of incorporation, by-laws, certificate of incorporation, and names and addresses of all officers and directors shall be provided. If a chapter 28E organization, a true copy of the agreement shall be provided.

2. A legal description of the property to be utilized, its location, and number of acres to be utilized.

3. The name, address, social security number or federal identification number of all parties that will be involved in the operation of the facility. If a corporation (profit or non-profit) or a 28E organization, the same information as requested in one (1) above shall be supplied.

4. The projected life, in years, of the landfill.

5. The total capacity, in tons, of the facility; the projected number of average tons to be received daily; and the hours per day and days per week the facility will receive solid waste.

6. The area contemplated to be served.
7. Identification of the probable customers for municipal waste, commercial waste, and industrial waste.
8. A list of the equipment to be used and available on the site continuously for operation of the facility.
9. An organization chart of the personnel or positions to be needed.
10. A job description of each position.
11. A three year projection, on a yearly basis, of the various costs of operation and the gross income to be received.
12. A three year continuancy plan, year by year, for reduction of costs if the gross income falls below projections.
13. If either the owner or operator is an entity other than a municipality or JME, a financial statement certified by a certified public accountant that the combined net worth of the owner and operator under general accounting principals is at least \$10,000,000. If the applicant establishes that this amount of net worth is more than reasonably needed to maintain the applicant's ability to properly operate the facility and to timely respond to any corrective action directed to include on-site and off-site contamination, the Board may reduce this amount to an amount that will reasonably insure compliance. If, upon evaluation of the application, the Board determines that the amount of net worth would be increased from this amount, it may increase it to the reasonable amount determined to be needed. If a permit is issued, the net worth established shall be maintained and a yearly financial statement certified by a certified public accountant furnished to the Board. If a permit is issued to a municipality or JME, said entity (ies) shall provide a yearly report to the Board stating the method and obligation of the participants to fund the facility to include mandatory yearly or fiscal funding in the event the volume of waste is insufficient to meet this obligation. A municipality and each member of a JME must acknowledge in writing as part and parcel of the 28E Agreement that each member, jointly and severally, accepts full liability for the project.
14. If the owner or operator is an entity other than a municipality or JME, proof that a surety bond has been obtained from an insurance company licensed to do business in Iowa as required by Section 455B.302, The Code, in an amount equal to \$1,000,000 plus fifteen cents per ton of capacity in excess of 1,000,000 tons.
15. Proof that an escrow account has been established in a minimum amount of \$50,000 upon which the Board is authorized to draw to pay for the costs it incurs in evaluating the application. If these funds are thus depleted prior to the Board completing its evaluation, the applicant shall deposit a further sum as determined necessary by the Board to complete the evaluation or the review process shall cease and the application dismissed, without prejudice to refileing. Any sums remaining after the Board completes its review process shall be returned to the applicant.
16. Proof of compliance with all requirements, rules and regulations of the DNR and EPA for the facility.

17. If the application is for a sanitary landfill, documentation that a landfill is needed as an alternative disposal method and why the hierarchy established in Section 455B.301A, The Code is insufficient.

18. The comprehensive plan as required by Section 455B.306, The Code, and directives, rules, and regulations of the DNR to include the following:

a. The plan by which waste from the contemplated service area will be reduced at its source as required by Section 455D.3, The Code, or as required by Section 455D, The Code, as it may be amended in the future. This requirement applies equally to waste generated outside this county as well as to waste generated within this county.

b. The amounts per ton of waste to be placed in a trust fund for: (a) financial assurance; (b) maintenance; (c) methane gas monitoring; (d) cost of closure; and (e) monitoring for thirty (30) years after closure as well as a true copy of the trust instrument adopted for these purposes. This trust instrument shall provide (1) that the trustee or custodian of these funds is an entity separate and distinct from the owner and operator and must be acceptable to the Board; (2) the method by which these deposits or payments will be made; (3) the method by which the trustee or custodian will verify the accuracy of the deposits or payments; (4) that the funds can only be invested in the same manner as funds of Iowa municipalities; (5) that any interest earned shall become part of the funds; (6) that the funds are public funds and not monies of

the owner or operator; (7) that these funds can only be utilized for the purposes provided for in the directives, rules and regulations of the EPA, DNR, and this county upon the joint certification of the permittee and this county or by order or directive of the DNR; (8) that an accounting of these funds shall be rendered to the county, owner, and operator quarterly; (9) that the trustee or custodian shall receive a reasonable fee for services as approved by the county; and (10) any funds remaining 30 years after the facility has been closed, shall become the property of this county and deposited in its general fund.

c. Proof of compliance with the requirements of 455B.306, The Code, and administrative rules adopted pursuant to 455B.304, The Code and 17A The Code, which relate to financial assurance instruments. Proof of compliance with administrative rules adopted after passage of this ordinance shall be provided to the Board with 60 days after said rules are adopted.

19. Establish that the facility is necessary to accommodate the solid waste management needs of the area which the project is intended to serve.

20. Establish that the project is designed, located, and proposed to be operated so that the public health, safety, and welfare will be protected.

21. Establish that the project is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property.

22. Establish that the plan of operations for the project is designed to minimize the damage to the surrounding area from fire, spills, or other operational accidents.

23. Establish that the traffic patterns to and from the project will not cause more damage or wear and tear upon this county's road system than it is now sustaining and that the traffic patterns are designed to minimize the impact on existing traffic flows.

24. If the operator is not a municipality, provide information regarding the previous operating experience of the operator and his, hers, or its subsidiaries or parent corporation or entity in the area of solid waste management or related activities.

25. Any other information or documentation requested by the Board which will assist the Board in making a determination as to whether the requirements of The Code and/or this ordinance will be satisfied.

Section 7. Notice to Adjacent Properties. An applicant shall, at least fourteen (14) days prior to filing an application for a siting permit, cause written notice of the application to be served either in person or by restricted certified mail on the owners of all property within the proposed local site area not solely owned by the applicant and on all of the property within two (2) miles in each direction of the lot line of the proposed local site property. The owners shall be determined based upon the tax records of this county and any adjacent county, if applicable. The applicant shall file proof of this notice with the Board.

Section 8. Published Notice. The applicant shall publish written notice of his, hers, or its application for a siting permit in the official newspaper of this county at least fourteen (14) days prior to the date of filing the application. The notice shall state the name and address of the applicant; the location of the proposed site; the nature and size of the development; the nature of the activity proposed; the probable life of the proposed activity; the date when the application for site approval will be submitted; and a description of the right of persons to comment on

the request. The applicant shall file proof of publication with the Board.

Section 9. Notice to DNR and Public Comment. The applicant shall file with the DNR a true copy of the application at least fourteen (14) days prior to its filing with the county. The applicant shall file proof of this filing with the Board. Any person may submit written comments concerning the appropriateness of the proposed site to the Board for its consideration no later than thirty (30) days after the date of the last public hearing. The application, other proof and documentation filed, and all public comments filed shall be open to public inspection and copying upon payment of the actual cost of reproduction during usual business hours.

Section 10. Determination of Sufficiency of Application. The Board shall, within fourteen (14) days of the filing of the application, determine if it complies with the requirements of this ordinance. If it determines it does not, the Board shall notify the applicant, in writing, of the deficiencies and what must be done to correct these deficiencies. If the applicant does not correct the deficiencies within fourteen (14) days of receiving written notice, the application shall be automatically dismissed without prejudice to refiling the application in accordance with the requirement of this ordinance.

Section 11. Evaluation of Project. If the Board determines that the application is sufficient, it shall retain qualified engineers, environmentalists, attorneys and other experts to advise it of the accuracy and adequacy of the statements and proof submitted with the application and of any other facts and circumstances bearing upon the application that should be considered by the Board. Written reports shall be received by the Board from these engineers, environmentalists, and other experts no later than seventy-five (75) days from the date of filing the application. These services shall be paid from the escrow account established in Section 6(15) upon certification by the Board. The Board shall furnish the applicant a copy of these reports, when received. These reports shall be open to public inspection and copying upon payment of the actual costs of reproduction during usual business hours.

Section 12. Public Hearing. The Board shall set a public hearing upon an application found to be sufficient between ninety (90) and one hundred twenty (120) days from the filing of the application. Notice of this hearing shall be published as provided in Section 331.305, The Code. The Chairperson of the Board, or the Board's designee, shall serve as Chairperson at the public hearing. At the hearing, the applicant shall first present his, hers, or its factual evidence to sustain the application. The public also shall have equal opportunity to present its factual evidence. Board members may question each witness. Other factual evidence or circumstances for the Board to consider shall then be presented by the county attorney. The Board, a representative of the applicant and members of the public shall be permitted to ask questions.

Section 13. Board Decision. Within thirty (30) days of the close of the public hearing, the Board shall set a time to consider and decide whether or not the permit is to be granted. This meeting shall be open to the public. However, the Board shall not receive any further evidence or comments from the applicant or the public. A majority vote of the Board shall be necessary for a decision. The Board shall cause its decision to be reduced to writing stating the reasons for its decision and executed by its chairperson within one-hundred eighty (180) days of the filing of the application. A copy of the decision shall be sent to the applicant by ordinary mail. A copy of the written decision shall be available for public inspection and copying upon payment of the actual cost of reproduction during usual business hours. The decision of the Board shall be final.

Section 14. Application Amendment. In the event the applicant amends his application, each time limit specified in this ordinance shall be extended by ninety (90) days from the date of the amended application. Only one amendment shall be permitted.

Section 15. Length of Permit. A permit granted under this ordinance shall be effective for three (3) years from the date of issue. An application for renewal may be filed within six (6) months of the expiration date by re-offering the statements and proof in the original application or altering or changing them as the circumstances warrant. A public hearing and decision on a renewal application shall be conducted in the same way as that for the original issuance.

Section 16. Issuance of Permit. The permit may include such special provisions pertaining to dust control, noise level, haul routes, hours of operation and any other provision the Board determines is in the best interest of the county and the residents in the vicinity of the facility. The permit shall be issued in the name of the owners and operator, jointly. The owners and operator,

jointly and severally, shall be responsible for the landfill and its operation in accordance with the rules and regulations of the EPA, DNR and this county. The owner and operator, jointly and severally, shall be responsible and liable for any on-site or off-site contamination or pollution and to respond to any order of abatement, clean up, and compliance with rules and regulations issued by the county, DNR, or other appropriate agency.

Section 17. Inspection. The sanitary landfill shall be subject to inspection by the county, DNR, or other appropriate agencies with or without notice to the permit holders. If violations are found, the permit holder shall be notified, in writing, of each violation and given thirty (30) days for correction. After the expiration of thirty (30) days, the facility shall be re-inspected. If the violations have not been corrected, the permit holder shall be notified, in writing of its failure and that the permit is subject to cancellation and revocation.

Section 18. Permit Revocation. A permit shall be cancelled and revoked if it is found that the facility has received hazardous waste; failed to correct violations; the net worth of the owner and operator has fallen below \$10,000,000; failed to remit tonnage fees to this county; failed to pay the trust account fees provided for in Section 6(18)(b); or is otherwise creating an immediate risk or hazard to the health, safety, and welfare of the residents in the vicinity of the facility or this county or adjacent counties.

Section 19. Hearing on Revocation. A permit can only be cancelled or revoked after a hearing before the Board of Supervisors and a finding, by a majority vote of the Board, that the permit holder has committed one of the grounds for revocation as provided in Section 18. The permit holder shall be served with written notice of hearing by certified mail to the permit holder's last known address. The notice shall state the grounds upon which revocation is sought. The hearing shall be held at least four (4) days but not more than twenty (20) days after service of the notice. At the hearing evidence shall first be presented as to the grounds for revocation. The permit holder shall be permitted to cross-examine any witnesses presented. The permit holder shall then be permitted to present what evidence and witnesses it shall desire. The supervisors and their designees shall be permitted to ask questions. At the close of the hearing the Board shall set a time, date, and place for its deliberation and decision.

Section 20. Decision on Revocation. At the Board's deliberation no other parties shall participate except the supervisors. The Board shall, by a majority vote, decide if the permittee shall be allowed to continue to operate the facility or if the permit is to be cancelled, and shall state its reason for either action. If the permittee is to be allowed to continue to operate, the Board may establish additional special provisions for the continued operation. The Board shall state how the additional provisions are designed to help prevent further violations of

Section 18. The Board shall reduce its decision to writing and serve a copy upon the permittee by certified mail to the permittee's last known address. A copy of the written decision shall be available for public inspection and copying upon payment of the actual cost of reproduction during usual business hours. The decision of the Board shall be final.

Section 21. Fee Payable to County. If the operator of the facility is a private entity or a JMPE that accepts waste from outside this county, a fee equal to \$3.00 per ton commencing July 1, 1993, and thereafter the maximum fee allowed by law, shall be

paid to the county by the 15th day of each month for the out-of-county waste landfilled for the preceding month. When making this remittance, the permittee shall render to the county a full accounting of all waste and fees received.


Section 22. Transfer Stations. The Board of Supervisors may issue a permit for operation of a transfer station within this county in conjunction with the operation of a sanitary landfill or other sanitary disposal project. Application shall be on such forms as prescribed by the County Engineer. The transfer station shall be constructed, operated, and maintained in accordance with regulations promulgated by the County Engineer. Notice of violations and revocation of this permit shall be in the same manner as that for a sanitary landfill permit.

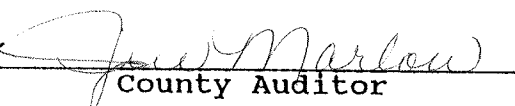
Section 23. Prohibited Acts. It shall be unlawful for any person, firm, corporation, other entity or a waste provider, to provide to a sanitary landfill yard waste, lead acid batteries, unprocessed tires, waste oil, and a landfill operator shall not knowingly place such waste in a sanitary landfill or other sanitary disposal project. Persons, firms, corporations, and all other entities shall separate yard waste from other solid waste.

Section 24. Penalty. Any person, firm, corporation, or other entity convicted of a violation of Sections 5, 22 or 23 of this ordinance shall be punished by a fine not to exceed \$100 or by imprisonment in the county jail not to exceed 30 days.

Section 25. Severability. If any provision of this ordinance is declared void, ineffective, or unconstitutional, the other provisions shall remain in full force and effect.

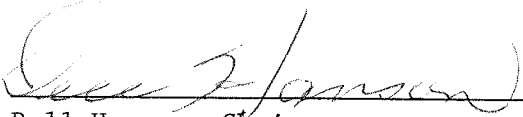
Section 26. Effective Date. This ordinance shall be in full force and effect from and after its final passage and publication as provided by law.

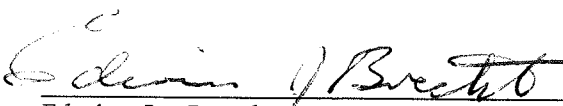

Chairperson, Benton County Board of Supervisors


ATTEST: 
County Auditor

First and Second Reading suspended by resolution on March 23, 1993.
Final Reading and Passage on the 30th day of March, 1993.

Adopted by the Benton County Board of Supervisors this 30th day of March, 1993.


Dell Hanson, Chairman


Edwin J. Brecht


Norman Sackett

December 2, 1992 Published Notice of Hearing and Summary of Ordinance #16
 December 8, 1992 1st Consideration Approved Subject to Changes
 December 15, 1992 2nd Consideration Approved Subject to Changes
 December 22, 1992 3rd Consideration NOT Adopted
 March 17, 1993 Published Notice of Hearings of Ordinance #16
 March 23, 1993 Suspended Requirement for Two Prior Readings
 March 30, 1993 Final Reading and Adoption of Ordinance #16
 April 7, 1993 Published Ordinance #16

I, Jill Marlow, do hereby certify the above to be a true and correct copy of Ordinance #16 and the dates of consideration & Publications are correct.

Jill Marlow
 Jill Marlow, Auditor



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