

## **WASTE DISPOSAL FACILITY LICENSING ORDINANCE TOWN OF LEBANON**

### **Article 1. Purpose & Authority**

**1.1** To provide the Town of Lebanon 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 air, surface and groundwater resources of Lebanon 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.

**1.3** The Board of Environmental Welfare of the Town of Lebanon is hereby authorized and empowered to regulate the storage, collection, transportation, processing and disposal of garbage and rubbish as provided in Title 30 Section 1917 of the Maine Revised Statutes Annotated.

### **Article 2. Definitions**

**2.1 Board:** A board of citizens of the town, to be designated or appointed by the Lebanon Board of Selectmen.

**2.2 Disposal:** The discharge, deposit, injection, dumping, 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 ground waters. Within 30 days of a waste being placed into or on any land or water, it shall be presumed that the waste has been disposed of, for purposes of this ordinance.

**2.3 Hazardous waste:** As defined in 38 M.R.S.A. , Sec. 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. Sec. 1303—A. It does not include wastes resulting from normal, household or agricultural activities.

**2.4 Liquid waste:** Any free—flowing, semi-solid, or liquid waste, including but not limited to those generated by a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility.

**2.5 Liquid waste lagoon:** A facility or part of a facility which is a natural topographic depression, man-made excavation, or diked area formed primarily of earthen materials, although it may be lined with man-made materials, which is designed to hold an accumulation of liquid wastes, special wastes, or wastes containing free liquids.

**2.6 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.

**2.7 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.

**2.8 Waste:** This term shall include Solid waste, liquid waste, hazardous waste, and special waste. This term shall not include domestic waste disposed of in subsurface wastewater disposal systems which meet the State of Maine Subsurface Wastewater Disposal Rules.

**2.9 Waste Disposal Facility:** Any land area, structure, location, equipment or combination thereof used for the treatment or disposal of waste, including liquid waste impoundments. A land area or structure does not become 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 individual homeowners or lessees to open burn leaves, brush, dead wood and tree cutting accrued from normal maintenance of their residential property, when such burning is permitted pursuant to 33 M.P.S.A. Section 599(3); or
- C. It is used by its residential owner 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. Section 599(3).

### **Article 3. Licensing**

**3.1** No person, firm, or corporation shall construct or operate a new waste disposal facility within the Town of Lebanon after the passage of this ordinance without obtaining a license from the town. Therefore, the disposal of any solid waste, liquid waste, hazardous waste, or special waste, (hereafter referred to as 'waste') is strictly prohibited within the Town except at the site of a waste disposal facility which has secured all applicable state and local licenses and permits.

**3.2** Said license shall not be transferred without the 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 reviewing Board that the transferee has the technical capacity and financial ability to comply with conditions of the license and with all 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 prior to expiration in accordance with the provisions of Article 10. 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 disposal facility while the application is pending, provided said licensee applied for license renewal in a timely manner.

**3.5** Waste disposal facilities operating on the effective date of this ordinance are grandfathered from the provisions of this ordinance for a period of three (3) years. The owner/operator of an existing waste disposal facility shall appear before the Board within 180 days to provide information on future plans for the facility. A license shall be issued for the normal license term of three (3) 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 will be in full 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, and 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.) and/or DEPs 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.
- e. 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 7.2).
- 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 a liners.
- g. Public health risk assessment.
- h. Economic and Growth impact assessment.

The Board shall, within 30 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. 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, or one thousand dollars (\$1,000.00) whichever is greater. Such fee shall be deposited in a special account designated for that application, to be used by the Board for hiring independent engineering, geological, planning or other consulting services necessary to review the proposal. If the balance in this special account is drawn down by 90% of the original deposit, the Board shall notify the applicant and require that an additional 0.5% be deposited by the applicant. The Board shall continue to notify the applicant and require an additional 0.5% whenever the balance is drawn down by 90% of the original deposit. The unexpended balance on the account shall be returned to the applicant after a final decision on the application is rendered. If the Board and the applicant mutually agree upon the qualifications and acceptability of all technical experts employed in the design and construction of the facility, the Board

may waive all or part of this requirement, provided the public health, safety, and welfare are protected and the purposes of these regulations are met.

**4.4** An application to renew a license shall be submitted to the Board accompanied by a fee of two thousand dollars (\$2,000.00), 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, any documents showing changes in other licenses and the federal or state level, and copies of all groundwater monitoring results from the previous license period.

## **Article 5. Procedures**

**5.1** A hearing shall be held by the Board within ninety (90) working days of the receipt of a complete application for a new license or thirty (30) working 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 180 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, and other factors relevant to the proposed facility and its operation.

**5.2** Within thirty (30) working days of the hearing, the Board shall issue, renew, or modify a license only if it finds, based on clear evidence, that :

1. The proposed facility meets the specific requirements set forth in this Ordinance;
2. Adequate provision has been made for the containment and treatment of leachate so as to prevent ground or surface water contamination;
3. Wastes proposed for disposal are compatible with each other and with the liner(s);
4. The proposed use will meet fire safety standards by providing adequate access for emergency vehicles to the site and to 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 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 nuisances which cannot 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 to control erosion and sedimentation;
10. Adequate provision has been made to control stormwater runoff and prevent drainage problems;

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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 which could be avoided by reasonable modification of the 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.

14. No adverse impact on public health.

15. No adverse impact on the economics and growth of the municipality. The Board shall issue a written report stating its findings of fact and its decision and, if a license is issued, any conditions attached to the license which the Board 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 Department of Environmental Protection'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 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.

6.4 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. 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. 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 on-site inspection during construction by an independent consultant, 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. As an alternative, the Board and the applicant may agree upon who the applicant will use to monitor construction.

**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, consisting of either (1) liability insurance, or (2) establishment of a trust fund. The insurance and trust fund shall be equivalent in coverage or dollar amount to the cost of installing an alternate or replacement water supply to serve the area susceptible to contamination by landfill leachate and shall meet the specific requirements of section 7.2. 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 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 the susceptible area with a replacement water supply 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 alternate 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 of waste 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 site. At that time, a portion of the trust fund shall be allocated for a detailed assessment of the facility's present and 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 the 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 more than 7 tons of waste, 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 Engineers 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 closure fee per unit of volume 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 investment. 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 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 7 may be waived if the Board makes written findings that alternative performance guarantees, such as trust funds administered between Maine DEP and 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 relating to the disposal of solid waste, take photographs, or other actions necessary to ensure compliance with the license.

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

**9.2** Any person who violates any provision of this ordinance is subject to fines as provided for 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, 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.

**10.2** Whenever the Municipal Officers or Code Enforcement Officer determine that there has been a violation by virtue of one of the conditions listed in 10-1.a- 10.1-f they shall give written notice of such violation to the violator:

- 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.

#### **Article 11. Penalties**

**11. 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 five hundred dollars (\$500.00) and a maximum fine of two thousand five hundred dollars (\$2,500.00) for a first offense. Subsequent violations shall be punished by a minimum fine of one thousand dollars (\$1,000.00) and a maximum fine of twenty-five thousand dollars (\$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 by the Town if the Town is the prevailing party.

#### **Article 12. Severability**

**12.1** 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 13. Conflicts**

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

#### **Article 14. Appeal**

**14.1** An aggrieved party may appeal any decision under these regulations to Superior Court.

*Historical Note: This Ordinance was originally adopted by Town Meeting vote March 12, 1988.*

