

Nov. 18, 1991

SOLID WASTE MANAGEMENT FACILITY PROHIBITION AND SITING ORDINANCE

I. RECITALS

WHEREAS, the Board of Supervisors of Russell County hereby finds that the unregulated disposal of solid waste, the maintenance of open dumps, and the maintenance of commercial solid wastes disposal facilities present tremendous potential problems and will have a significant adverse impact on the community. Potential problems include controlling the disposal of toxic and hazardous waste, groundwater and surface water pollution resulting from leachate dispersion and rain water run-off, heavy truck traffic impacting roads and adjacent uses, and the potential abandonment of waste disposal sites because of a lack of adequate capital and financial resources of the operator or owner resulting in governmental responsibility for clean-up.

WHEREAS, it is the intent of the Board of Supervisors of Russell County, to prohibit the unregulated disposal of solid waste, the maintenance of open dumps, and the establishment, operation and/or maintenance of privately owned or privately operated solid waste disposal facilities.

WHEREAS, the General Assembly of Virginia has authorized Russell County to regulate, by ordinance, the siting of solid waste management facilities within its boundaries.

WHEREAS, the General Assembly has authorized Russell County to adopt such measures as it may deem expedient to secure and promote the health, safety and general welfare of the inhabitants of Russell County, such regulations to include the prevention of the pollution of the water and air in Russell County.

WHEREAS, no application for a solid waste management facility permit can be considered complete and filed with the Virginia Department of Waste Management ("DWM") unless it includes a certificate from the governing body of Russell County that the location and operation of the facility are consistent with all applicable ordinances.

NOW, THEREFORE, to promote the health, safety and general welfare of the citizens of Russell County, and to fulfill the objectives of Va. Code Ann. Sections 10.1-1408.1, 15.1-11.02, and 15.1-510, the following is adopted as the Solid Waste Management Facility Prohibition and Siting Ordinance of Russell County, Virginia.

II. PREEXISTING ORDINANCES, EFFECTIVE DATE

Section 2.1. This Ordinance shall become effective from the date of its approval and adoption as provided by law. This

Plan.

III. DEFINITIONS

Section 3.1. For the purpose of this Ordinance, the terms or words used herein shall have the same meaning as the same terms or words as defined in the Virginia Waste Management Act, Va. Code Ann. Sections 10.1-1400 through 10.1-1457. In addition, this Ordinance shall specifically apply to and prohibit private thermal burn units, private commercial incinerators and gas injection wells.

IV. PURPOSE

Section 4.1. This Ordinance is established for the purpose of protecting, promoting, and preserving an environment that is conducive to public health and welfare, preventing the creation of nuisances and the depletion of natural resources, and to maintain such levels of air quality and water quality as will protect human health, welfare and safety; and to the greatest degree practicable, prevent injury to plant and animal life and property and to nurture the comfort of the people in their enjoyment of life and property; and to encourage the social and economic development of Russell County and to facilitate the enjoyment of its attractions.

V. PROHIBITION OF PRIVATE SOLID WASTE MANAGEMENT FACILITIES

Section 5.1. It shall be unlawful to establish, maintain or operate an unregulated dumping place, an open dump, or a privately owned or privately operated solid waste management facility within the territorial boundaries of Russell County.

Section 5.2. It shall be unlawful for any person or entity to transport for disposal into the territorial boundaries of Russell County any garbage, trash or refuse which has been compacted or baled in such a manner that it cannot be readily examined and inspected by manual means by county officials for the purpose of determining whether such garbage, trash or refuse contains hazardous substance.

Section 5.3. It shall be unlawful for any person to collect, haul, transport or convey garbage or trash for disposal within the boundaries of Russell County except from one's own residence to an approved bulk container in the community or to a county approved solid waste management facility.

Section 5.4. It shall be unlawful to transport such refuse to points through and outside Russell County except for the transporting of such refuse in adequately covered trucks to points outside of the boundaries of Russell County, Virginia.

VI. SITING OF SOLID WASTE MANAGEMENT FACILITIES

Section 6.1. Section VI of this Ordinance, "Siting of Solid Waste Management Facilities," shall apply only to landfills operated by Russell County or by a regional waste or service authority in which Russell County is a participating member. In addition, the provisions of Section VI shall apply to certain

waste management facilities other than captive industrial landfills. ~~The provisions of Section VI shall apply to privately~~

~~owned or privately operated solid waste management facilities only in the event the prohibition provisions of Section V of this Ordinance are ruled invalid by a court of competent jurisdiction.~~

Section 6.2. No person shall establish, operate, or maintain a solid waste management facility without a Certificate from the Russell County Board of Supervisors.

Section 6.3. A solid waste management facility shall not be sited or constructed in areas subject to base floods.

Section 6.4. No solid waste management facility shall be sited in geologically unstable areas where adequate foundation support for the construction components for the solid waste management facility does not exist, giving due consideration to soil conditions, geological and geomorphologic features, manmade features, caverns, tunnels, mines, and sink holes.

Section 6.5. No solid waste management facility disposal area shall be closer than 500 feet from any regular flowing surface body of water, 1,000 feet from any well, spring, or other groundwater source of drinking water. Any solid waste management facility disposal area shall also be minimum of 100 feet from any public road or right of way used by anyone other than the person operating the facility, and a minimum of 1,500 feet from any residence, school, hospital or nursing home, church, recreational and park areas, and retail establishment.

Section 6.6. There shall be a minimum of separation of ten feet between the deposit of solid waste and maximum seasonal water table or bedrock unless equal isolation or separation can be achieved and maintained by engineered construction and operation methods to meet the standards of DWM.

Section 6.7. The access from a primary highway to the proposed facility site shall be an all weather paved road.

Section 6.8. The Board of Supervisors shall also consider the following siting criteria in evaluating an application:

(a) Suitability of the proposed solid waste management facility site in light of the surface and subsurface conditions (porous, fractured, or subsided, or is subjected to same from past, present, or future mining or as otherwise affected by natural sink holes, fissures, and cracks).

(b) Impact of the proposed solid waste management facility site on groundwater and water used by surface owners and localities with Russell County.

(c) The fitness of the applicant, its owners and their companies, to guard and to protect the safety and welfare of the public and of water and other natural resources.

(d) The likelihood that a breach of the solid waste management facility containment systems could occur and if so, the impact such a breach would have upon groundwater and surface water.

Code Ann. Section 15.1-456.

Section 6.9. The siting of a solid waste management facility,

whether publicly or privately owned or operated, shall be subject to the review of the Russell County Planning Commission pursuant to Va. Code Ann. Section 15.1-456.

Section 6.10. A Certificate awarded pursuant to this Ordinance shall not be transferrable or assignable.

Section 6.11. A new Certificate shall be required pursuant to this Ordinance for the establishment of a new facility, the expansion of any existing facility, or due to any material change in design or process at an existing facility.

VII. EXCEPTIONS

Section 7.1. Facilities for the disposal of solid waste from the extraction, beneficiation, and processing of coal shall be exempt from this Ordinance provided such facilities are managed in accordance with the requirements promulgated by the appropriate agencies of the Commonwealth of Virginia.

Section 7.2. The exception provided in Section 7.1 shall not apply to facilities for the disposal of by-products of coal combustion such as fly ash and bottom ash.

VIII. APPLICATION FOR CERTIFICATE

Section 8.1. An application for a Certificate shall contain the following information:

- (a) The name, address, and phone number of applicant.
- (b) The names, addresses, and work and home phone numbers of all persons and entities owning an interest exceeding five percent, whether expressed or silent, in the proposed solid waste management facility's operating entity, in the site, or in the applicant.
- (c) The legal description of the property on which the facility is proposed to be located and tax map reference.
- (d) A copy of the lease or deed establishing the applicant's right to use the proposed site.
- (e) A description of the current use of the proposed site.
- (f) The present zoning district of the site.
- (g) The proposed size and type of solid waste management facility.
- (h) A preliminary site plan showing the boundary of the site, the proposed disposal areas, and other facilities and equipment to be located at the site.
- (i) A list of all property owners, both surface and mineral, and mailing addresses as shown on the Russell County land books who are contiguous, adjacent or within one mile of the proposed site.
- (j) The names, addresses, and phone numbers of all residents and owners living within a one-mile radius of the proposed solid waste management facility site and detailed information regarding the source of each listed resident's water supply and any surface and water damage reported to the applicant by the resident due to past or present mining activities; the applicant shall take a

to cooperate with the applicant, the applicant shall report that fact in the application.

(k) A description of the type of waste to be deposited in the proposed solid waste management facility.

(l) A description of the anticipated rates or fees to be charged for the disposal of solid waste, an estimate of the total volume of waste to be disposed of each year, and an estimate of the total annual revenues to be generated by waste disposal activities at the proposed site.

(m) A complete description of the nature of any contracts, the identity of parties to such contracts for the acceptance of solid waste involving the proposed site that have been agreed to at the time the application is submitted or prior to the final action of the Board of Supervisors or its agent on the applications.

(n) A complete and thorough listing concerning the environmental record of the entities who have been in contact or have contracted with the applicant to utilize the solid waste management facility.

(o) A complete and thorough record of the compliance history of the applicant concerning state and federal environmental laws.

(p) All information contained in subparagraphs (l), (m), (n), and (o) above shall be updated periodically by the applicant pending the approval or disapproval of the solid waste management facility siting application.

(q) A plan for land use of the site after the facility is closed.

(r) Complete information regarding violations of federal or state environmental laws or regulations by any of the applicant's owners, officers, or any corporate entities in which the applicant owns or has owned an interest; the environmental controls referred to herein include, but are not limited to, any and all statutes and regulations enforced by the Division of Mined Land Reclamation, the Division of Mines and Quarries, The Department of Mines, Minerals and Energy, the Office of Surface Mining, the State Air Pollution Control Board, the State Water Control Board, and the U.S. Army Corp of Engineers.

(s) Information regarding felony convictions of the applicant or any of the applicant's owners, officers, or any corporate entities in which the applicant or any of its owners, owns or has owned an interest.

(t) A map showing the location of the facility, the roads and right-of-way giving access to the facility, and an approximate location of residences, schools, hospitals, churches, and retail establishments located along any street or secondary road proposed to be used as an access road for the facility.

(u) A site plan showing the entire acreage owned or controlled by the applicant, the names of adjoining property owners, the location of any adjoining property or other properties within 1 500

protection to be provided by the applicant to satisfy the financial assurance regulations of DWM.

(w) The names, addresses, and relevant experience of all key personnel to be employed or retained by the applicant in connection with the operation of the proposed solid waste management facility.

(x) Complete information regarding violations of federal or state environmental laws or regulations by any of the key personnel identified in subparagraph (w) above or in any application submitted to DWM.

Section 8.2. In addition, the applicant for a Certificate may be requested to furnish engineering and site plans to show: slope and direction of rock strata and aquifers; availability of cover material on site, or arrangements for obtaining adequate cover material from a borrow site; location of springs, seeps, and other ground water sources; other possible groundwater intrusion to the site; location of any gas, water, sewage, electrical or other of any such facilities on the site; and the location on the site of prior open dump, landfill, lagoon, surface or deep mine, or similar facility. If requested, the applicant shall provide detailed core hole samples from two locations within 50 horizontal feet of the opposite extremities of the site of at least 300 feet deep - (50 feet deep if near a utilized fresh water aquifer). If requested, the applicant shall also provide certified test results of the water quality of any fresh water aquifers beneath the proposed site to a depth of 300 feet. If requested, the applicant may be asked to furnish a plan for transporting waste through Russell County to the waste management facility site.

Section 8.3. If the applicant's proposed solid waste management facility is situated within 3,000 feet of any abandoned, inactive, or active coal mining operation, the following information shall be supplied as part of the application prior to consideration of the applicant's request for siting approval:

(a) The names and addresses of the coal and mineral owners within a 3,000-foot radius of the proposed solid waste management facility site with supporting documentation as available in the county land book records.

(b) A list with certification from the Division of Mined Land Reclamation (Department of Mines, Minerals and Energy) of all applications, and past and present permits, for the surface mining or deep mining of coal within a 3,000-foot radius of the proposed solid waste management facility site.

(c) If the Division of Mined Land Reclamation finds that such permit applications are pending or such mining is in progress or that abandoned coal mines exists within the 3,000-foot radius area, then the applicant shall provide copies of the relevant mining permit applications, complete with maps of the active, inactive, proposed, or abandoned mining sites with the boundary of the proposed solid waste management facility site outlined in red and

control plans contained within the mining permit applications as set forth in the mining permit files.

(d) If the landfill site is on limestone, or similar soluble rock, then it will be required that the applicant document all caves, openings, sink holes, disappearing streams, known cave passages, and any types of subterranean life forms and their status on the federal and state endangered species list.

Section 8.4. Verification of Application. The information in the application shall be sworn to as being complete and accurate and shall be signed by the president of the applicant's corporation if said applicant is a corporation or by all of the partners in a partnership, both general and silent partners, or the individual sole proprietor if same applies.

Section 8.5. Application Fee. The non-refundable fee established by the county to cover the costs of processing and reviewing the application, giving notice to effective property owners, and advertising a public hearing shall be a minimum of \$5,000.00 or the actual cost of processing and reviewing the application, whichever is greater, and shall include the costs of legal and technical review, and the minimum fee shall be payable by the applicant with the application.

IX. PUBLIC HEARING AND DEADLINE FOR BOARD ACTION

Section 9.1. Within 60 days after the receipt of a complete application, as determined by the Board of Supervisors or its agent, the Board shall hold a public hearing on the proposed siting of the solid waste management facility. The hearing shall be advertised as all other non-revenue ordinances are advertised. The Board shall make a decision following the public hearing no later than 120 days following the receipt of the complete application. If the Board approves the siting location, it shall issue a Certificate as specified by Section 10.1-1408.1. If the Board declines to issue a Certificate, it shall advise the applicant of the reasons for declining to issue a Certificate.

Section 9.2. If the Board of Supervisors or its agent returns an application to an applicant with instructions to provide additional information, because of the applicant's failure to obtain approval required by any ordinance of Russell County or the Code of Virginia, or because of the application of this or any other ordinance prohibiting the establishment, operation or maintenance of a privately owned or privately operated solid waste management facility, the application shall be deemed incomplete and no further action by the Board or its agent shall be required until the reason for the return of the application has been corrected. Should any application be so returned, the applicant shall have the right to resubmit the application to be reviewed by the Board or its agent for completeness without the deposit of any additional application fee.

Section 9.3. The submission of any application pursuant to

X. CRITERIA FOR ISSUANCE OF CERTIFICATE

Section 10.1. In making a decision as to whether the Certificate shall be issued, the Board of Supervisors shall consider the potential affect of the proposed solid waste management facility on the health, safety and welfare of the County and its residents and the criteria set forth in this ordinance.

Section 10.2. The Board of Supervisors, in determining whether to issue a Certificate, may also consider whether the proposed facility is compatible to existing land uses and what visual barriers such as tree buffers or berms are to screen the site from adjacent residences, schools, hospitals, churches, parks and recreation areas and retail establishments. The Board of Supervisors may consider litter on the access road to the site, fugitive dust, noise, odor, hours of operation, and artificial lighting that may negatively effect adjacent uses of land.

XI. DENIAL OR ISSUANCE OF CERTIFICATE

Section 11.1. In denying a Certificate, the Board of Supervisors may state conditions which, if complied with, would result in the issuance of a Certificate, and if the applicant agrees to comply with such conditions and resubmits his application containing all such conditions, then the Board may grant a Certificate upon further public hearing.

Section 11.2. If a Certificate is granted, the Certificate shall name the applicant, its address, describe in detail the location of the site and list the types of solid waste which may be disposed of on the site. The Certificate shall specifically refer to the date of the application and specifically list any date of any amendments thereto. When a Certificate is issued, the Certificate shall state that the location and operation of the facility are consistent with all applicable ordinances of the County. A copy of the application and all amendments thereto shall be attached to the copy of the Certificate which is to be filed by the applicant with DWM.

Section 11.3. No Certificate shall be issued if the Board of Supervisors determines that the applicant lacks sufficient financial resources to safely and adequately establish, operate, maintain, and close a proposed facility.

Section 11.4. No Certificate shall be issued if the Board of Supervisors determines that the applicant, its owners, officers, any corporate entities in which the applicant owns or has owned an interest, or any key personnel identified in the application and any application submitted to DWM have been found to have violated any federal or state environmental laws or regulations.

XII. MODIFICATION/TRANSFER/LAPSE/REVOCATION

Section 12.1. No Certificate issued pursuant to this Ordinance shall be transferrable. A material change in the corporate ownership of any corporation that has been issued a Certificate

public hearing. A site may be decreased in size or the types of waste or volume disposed of may be reduced without amendment of a

Certificate or the submission of new application. Provided, that in the event of a reduction in the size of the site or reduction in types of waste to be handled at any time after the issuance of the Certificate, the applicant shall within 30 days thereof file with the Board of Supervisors a new plat of the site and a new description of the types of waste which shall be disposed of at the site.

Section 12.3. Any Certificate issued pursuant to this Ordinance shall lapse twelve months after the final action of the Board of Supervisors on the application unless the holder of the Certificate has begun the actual construction of the proposed facility.

Section 12.4. Any Certificate granted pursuant to this Ordinance shall lapse if at any time the holder of the Certificate shall cease operation of the facility for a period of twelve months.

Section 12.5. Any Certificate granted pursuant to this Ordinance may be revoked by the Board of supervisors should the Board determine that the facility is being operated or maintained in a manner that poses a substantial present or potential hazard to human health or the environment.

Section 12.6. Any Certificate granted pursuant to this Ordinance or pursuant to any prior ordinance may be revoked by the Board of Supervisors should the Board determine that the grant of the Certificate was based on an application containing material misrepresentations or omissions.

XIII. CONTINUING AUTHORITY OF THE BOARD OF SUPERVISORS

Section 13.1. The Board of Supervisors reserves the right to make such inspections of the site as necessary to carry out the purposes of this Ordinance. The Board reserves the right to suspend and close a facility upon a finding by the Board of imminent dangers to the public and/or to the environment. The Board will provide a reason for such closing to the facility manager and owner and a list of corrected actions to be taken to correct such problems.

XIV. SEVERABILITY

Section 14.1. Should any section or provision of this Ordinance be declared by a court of competent jurisdiction to be invalid, such decision shall not effect the validity of the Ordinance as a whole or any part thereof other than the part or parts that are declared to be invalid.

XV. PENALTIES AND ENFORCEMENT

Section 15.1. The County Administrator of Russell County shall be responsible for enforcing the requirements of this Ordinance.

Section 15.2. Violation of this Ordinance and any other solid waste ordinance previously adopted by Russell County shall be

separate offense. In addition, the provisions of this Ordinance may be enforced by a suit for injunctive relief in a state court of competent jurisdiction.

Section 15.3. Nothing in this Ordinance shall be construed to exempt any person or applicant from any other federal, state, or local regulations required for the establishment, operation, or maintenance of a solid waste management facility. Other such regulations include, but shall not be limited to, the National Fishing Enhancement Act of 1984, the Clean Water Act, the National Environmental Policy Act of 1969, the Fish and Wildlife Act of 1956, the Federal Power Act of 1920, the Historic Preservation Act of 1966, the Endangered Species Act, and the Virginia Waste Management Act.

XVII. DECLARATION OF EMERGENCY

Section 16.1. This Ordinance is adopted upon determination by the Board of Supervisors that an emergency exists within the County warranting the adoption of this Ordinance on an emergency basis pursuant to Va. Code Ann. Section 15.1-504. This Ordinance shall be effective immediately upon adoption, and shall continue in full force and effect for a period of sixty days or until readopted in conformity with the Code of Virginia

ADOPTED this 18 day of Nov., 1991.

CHAIRMAN, BOARD OF SUPERVISORS
OF RUSSELL COUNTY

COUNTY ADMINISTRATOR