

AN ORDINANCE REGULATING THE SITING OF SOLID WASTE MANAGEMENT
FACILITIES IN GARRARD COUNTY

Garrard County Fiscal Court Ordinance # 0-11-12-01-1

AN ORDINANCE pertaining to the public health and safety of the environment by regulating the siting of solid waste management facilities in Garrard County.

Pursuant to Kentucky Revised Statutes 224 and 109 and related administrative regulations, Garrard County, including the City of Lancaster, has been designated as a solid waste management area, based upon a Solid Waste Management Plan approved by the Natural Resources and Environmental Protection Cabinet, hereinafter referred to as “the Cabinet,” of the state of Kentucky. In addition, Garrard County is acting under powers in KRS 67.083 (3) (o) which provides the authority to manage solid waste by ordinance.

NOW, THEREFORE, BE IT ORDAINED by the Fiscal Court, Garrard County, Kentucky, that this ordinance shall be known as the Siting of Solid Waste Management Facilities in Garrard County Ordinance.

SECTION 1. PROHIBITION

- (A) No person shall construct or operate a solid waste management facility or site to include construction/demolition (CD/D) sites until facility site approval has been obtained from the Garrard County Fiscal Court or its agents pursuant to this ordinance.
- (B) Further, no person shall engage in the disposal of solid waste without having first obtained all necessary permits from the Natural Resources and Environmental Protection Cabinet
- (C) No person shall dispose of radioactive waste (including waste identified as below regulatory concern by the Nuclear Regulatory Commission) or untreated, infectious waste in Garrard County other than small quantities as allowed pursuant to Titel 401 KAR, Chapters 30-48.

SECTION 2. SITE APPROVAL PROCESS

- (A) The owner/operator of a new facility or proposed facility, or the owner/operator of an existing facility seeking expansion shall file a petition for site approval with the Garrard County Fiscal Court at the office of the Garrard County Judge/Executive/
- (B) The petition for site approval shall include:
 - (1) The name and address of the owner/operator and the street address, if any, of the proposed site facility;

- (2) A copy of the deed or other document establishing the right, title and interest of the owner/operator in the proposed site or facility.
- (3) A current USGS map showing the location of the proposed site, at a scale of one (1) inch equals two thousand (2000) feet, with said map showing the entire boundaries of the site or proposed site;
- (4) A description of the type of solid waste and the source of generation of the solid waste involved in the solid waste to be conducted on the site together with a description of the technology and the procedures the owner/operator proposed to utilize in its solid waste management activities at the site.
- (5) A complete history of the owner/operator's prior experience and the ownership and/or operation of any an all solid waste sites or facilities, wherever situated. Such disclosures shall conform to all of the requirements set forth in KRS 224.861 and the provisions of said statute are hereby incorporated by reference herein and made a part hereof.
 - (a) Any administrative, criminal or civil action pending against it, him or her, alleging violation of any federal, state, or local law or regulation.
 - (b) For the five (5) year period immediately preceding the date of filing of the petition for site approval, whether the owner/operator has been convicted of a crime, entered a plea of guilty, a plea of nolo contendere or such other plea of no contest to a felony misdemeanor charge, been held liable in a civil or administrative actions, or agreed to the payment of any civil penalties or monies as part of the final disposition of any civil, administrative or criminal proceeding, involving the violation of any federal, state, or local law or regulation applicable to the management of solid waste and the protection of human health and the safety of the environment.
- (6) The petition for site approval shall identify the following persons and entities, and provide the compliance information required by subsection (B) (5) of this section for each person or entity so identified:
 - (a) The owner/operator applying for site approval;
 - (b) If the owner/operator is a proprietorship, each proprietor and the interest held;
 - (c) If the owner/operator is a partnership, each of the partners and their interest, and any corporation, joint

venture, partnership in which any of the partners of the applicant owner/operator hold twenty-five (25) percent or greater interest in any of the partners comprising the applicant;

- (d) If the owner/operator is a corporation, a detailed listing of the officers, directors, and any stockholders holding ten (10) percent or more stock in the corporation; any corporation of which the applicant owner/operator is a subsidiary or which holds a ten (10) percent or greater interest in the applicant; any corporations that are either subsidiaries of the applicant or in which the applicant holds a ten (10) percent or greater interest; and any proprietorship, partnership, or joint venture in which the applicant holds a ten (10) percent or greater interest. For the purpose of this section, "interest" includes ownership or other interest reflected in stocks, assets, or other beneficial interests.

(7) Financial data including:

- (a) An estimate of the total cost of the facility and an estimate of the cost of the major components of the facility;
- (b) Audit statements of income and balance sheets of the owner/operator for each of the three (3) years immediately preceding the year in which the petition for site approval is filed;
- (c) A plan of financing for the proposed facility, including the amount to be raised through debt and the potential sources thereof. If the owner/operator is a subsidiary corporation which wishes to have the financial resources of its parent considered, the owner/operator shall submit, in addition to the foregoing, a description of the relation between the subsidiary and the parent and written confirmation from such parent corporation that its financial resources are available to finance the proposed facility as represented by the subsidiary.
- (d) A statement showing evidence of a minimum of \$5,000,000 liability insurance coverage or 10 percent greater than the cost estimate in the closure plan in effect or proposed with respect to the facility, together with true copies of any policies of insurance in effect and a listing of any claims made or threatened under any policies of liability insurance;
- (e) A statement as to whether the owner/operator has been designated as a potential responsible party under the

Comprehensive Environmental Response
Compensation and Liability Act of 1980, as amended;
and, if so, the location the site or sites involved, an
estimate of the owner/operator share, if any, of the cost
to clean up the site and a description of site and
superfund listing, except however dominicus claims
below liability in the sum of \$50,000 need not be
reported under this section.

- (8) A statement as to the present suitability of the site for the conduct of the proposed activity and of any additional measures that would be required to make the site suitable for such activity
- (9) A set of drawings conducted by a licensed engineer depicting the proposed facility, which drawings conducted by a licensed engineer depicting the proposed facility, which drawings impart sufficient detail and information for the conduct of the petition under this ordinance;
- (10) A facility impact report (FIR) in accordance with section 4 of this ordinance;
- (11) A copy of the public notice of the right to submit comments to the Garrard County Fiscal Court pursuant to Subsection (D) hereof;
- (12) Evidence of notification by certified mail to adjoining property owners of the site of the intention to submit to the Garrard County Fiscal Court a petition for site approval of a solid waste management facility to include a construction/demolition site. Property owners include:
 - (a) Property owners immediately adjacent to the site;
 - (b) Persons owning property of record in Garrard County along transportation corridors providing direct access to the site which are within a one (1) mile radius of the site.
- (13) A list of the names and addresses of all persons to whom the petition for site approval was submitted pursuant to the provisions of Subsection (C);
- (14) The following certification: "I certify I have personally examined and am familiar with the information submitted in this and all attached documents and based on my inquiry of those individuals responsible for obtaining information, I believe the submitted information is true, accurate, and complete", which shall be signed by the owner/operator where:

- (a) If the owner/operator is a corporation, by an authorized executive officer; or
 - (b) If the owner/operator is a partnership, by an authorized general partner; or
 - (c) If the owner/operator is a sole proprietor, by the proprietor; or
 - (d) If the owner/operator is a governmental agency, by the head of the agency
- (15) The owner/operator siting fee or fees under Section 5 of this ordinance.
- (16) Any information submitted to the Garrard County Fiscal Court pursuant to this ordinance may be claimed confidential by the submitter. Any such claim must be asserted at the time of submission in the matter prescribed on the application form or instructions or, in the case of other submissions, by stamping the words “Confidential Business Information” on each page containing such information. If no claim is made at the time of submission, the Garrard County Fiscal Court may make the information available to the public without further notice. If a claim is asserted, the information will be treated in accordance with the procedures in KRS 224.035 which are adopted herein by reference. Claims that the name and address of any owner/operator or the type of waste to be disposed of at the landfill is confidential will be denied.
- (17) A true copy of the permit application required by the Cabinet shall be filed with the Garrard County Fiscal Court at the same time it is filed with the Cabinet. The owner/operator shall include all information required by Title 401 KAR, Chapters 30-40.
- (18) A closure plan for the landfill as required by Title 401, Chapter 47 of KRS with estimates to closure costs.

(C) Submission and Distribution

- (1) The petition for site approval shall be submitted to the Garrard County Judge/Executive. Within forty-five (45) days of the receipt of the petition for site approval, the owner/operator shall be notified in writing if the petition for site approval is administratively complete. For the purpose of this ordinance, “administratively complete petition” means a petition for site approval which the Garrard County Judge/Executive or its agents determines to contain information addressing each petition requirement of this ordinance and to contain all information necessary to initiate technical processing and public review. Additional

information may be required after determination that application is deemed administratively complete.

- (2) Upon receipt of the notification from the Garrard County Judge/Executive of administrative completeness, the owner/operator shall forthwith deliver the petition for site approval to the following persons:
 - (a) Members of the Garrard County Fiscal Court at those addresses set out in the list to be provided to the owner/operator by the Garrard County Judge/Executive
 - (b) Garrard County Solid Waste Management Committee
 - (c) The fire department chief with jurisdiction over the site or facility. Such fire department shall be within the boundaries of Garrard County;
 - (d) The Garrard County Emergency Management Coordinator;
 - (e) Directors of the following Garrard County agencies and departments: Department of Health and Office of the County Attorney;
 - (f) The Kentucky Department of Fish and Wildlife Resources;
 - (g) Any other county board or committee deemed appropriate by the Garrard County Fiscal Court.

(D) Public Comment & Hearing

- (1) Each petition for site approval shall be subject to a public comment period and request a public hearing. After the owner/operator has been notified that the petition for site approval is administratively complete and has delivered the petition as required, the owner/operator shall cause to be published a public notice weekly for six (6) consecutive weeks in the two (2) newspapers of greatest circulation in the state of Kentucky and the two (2) newspapers of the greatest circulation in Garrard County. The notice shall be in the form approved by the Office of the Garrard County Judge/Executive and shall advise the public that a petition for site approval has been filed; the beginning date and the ending date of the public comment period shall commence as of the date of the first public notice and shall end fourteen (14) days after the last public notice has been published or on the date on which the public hearing is concluded. The public hearing shall be held within forty-five (45) days after the date of the publication of the last of the six (6) weekly public notices required herein. The public hearing will be held in Garrard County.

SECTION 3. FISCAL COURT DETERMINATION AS TO FACILITY SITE APPROVAL

- (A) Within sixty (60) days after the conclusion of the public hearing, the appropriate Fire Department Chief, the county EM Coordinator, Director of the Health Department, Solid Waste Management Committee, and others receiving a petition shall review the petition for site approval together with any comments or information received during the public comment period, and make a recommendation to the Garrard County Fiscal Court regarding the granting or denial of the approval of the facility site. Within thirty (30) days following receipt of the agency recommendations, the Garrard County Fiscal Court shall make final determination whether to grant or deny petition for site approval.
- (B) It is the determination of the Garrard County Fiscal Court that the purpose of this ordinance is to protect human health, quality of life, and the environment of Garrard County from unreasonable risk posed by improper siting of solid waste site facilities. The public must be afforded protection from unreasonable risk to human health and safety from the siting of or modification to solid waste sites or facilities and the operations of such facilities. The Garrard County Fiscal Court in making its determination pursuant to this ordinance, will consider the facility impact report and other information required to be submitted by the independent consult as commissioned by the Fiscal Court and other information submitted by the public.

At a minimum, the Fiscal Court will consider the following criteria in determining the appropriateness of the siting of the proposed solid waste site or facility or modifications to an existing site facility.

The Fiscal Court will consider each potential pathway for exposure, the magnitude, frequency, duration and degree of risk posed, and the chronic, acute, direct, indirect, and cumulative risk posed to human health by the proposed activity, siting or modification and subsequent operation for reasonability.

The Garrard County Fiscal Court shall grant the petition for site approval if it finds, on the basis of the information available to it that:

- (1) The nature of the solid waste management activity conducted at the facility or site will not present an unreasonable risk to human health or safety; and
- (2) The nature and extent of the solid waste activity conducted at the proposed site would not significantly impeded or adversely impact the provision of fire, health and other emergency services to the public both in the vicinity of the site and throughout Garrard County; and

- (3) The nature of the solid waste activity conducted at the facility site would not result in a significant reduction in the public's use and enjoyment of parks, recreational water, historic structures, cultural and natural resources located in the vicinity of the facility site; and
- (4) The facility and the solid waste activity occurring in the site will not have a significant adverse impact on the establishment of businesses, residential developments, churches, schools or other types of activities related to social, economic and cultural development of Garrard County; and
- (5) The owner/ operator has sufficient financial resources to: complete construction of the new or expanded; facility; maintain and operate the facility in compliance with applicable laws and regulations; respond immediately in the event of emergency by reason of accident or upset at the site; and complete closure of the facility; and
- (6) The owner operator has complied with all solid waste management laws and regulations concerning solid waste facility permits, filing and/or notifications required by the Natural Resources and Environmental Protection Cabinet for the construction and operation of the facility site; and
- (7) The application is consistent with the goals and objectives of the Garrard County Solid waste Management Plan; and
- (8) The required financial responsibility for post-closure has been established, by the filing with the Garrard County Judge/ Executive a bond or establishing an escrow account in the amount of \$5,000,000 or greater. Said bond or escrow account shall be used to address post-closure corrective action needed. Said bond or unexpended balance of any escrow account shall be released in thirty days from the date of official closure.

- (a) An additional requirement for closure will be determined by the detailed plan for closure as required by KRS 224.846 and Title KAR 47:040 in combination with the estimated closure costs provided by the petition for site approval. In the event that closure is determined by the petition for site approval to exceed those determined by the Cabinet, the owner/operator shall file an additional bond with the Garrard County Judge/ Executive or establish an escrow account for an amount set to cover the new differences in the estimate costs for closure.

- (b) At the time the facility permanently ceases accepting waste, the facility shall be filled, covered, graded, seeded and revegetated according to regulations promulgated by the Garrard County Fiscal Court. Upon determination by the Cabinet that the site has been fully closed and at the end of thirty (30) year post closure

date, the Garrard County Judge/ Executive shall release the bond or other guarantee of financial responsibility that has been provided by the operator of the facility, the Garrard County Judge/ Executive or its agents shall forfeit the bond on demand release of the monies held to guarantee financial responsibility.

- (c) The proven cost estimate for closure and corresponding bond shall be reviewed and adjusted at least once every five (5) years or subsequent review and adjustment of the bond by the cabinet.

(C) Notification

The Garrard County Fiscal Court shall send written notification of its determination with respect to the petition for site approval to the owner/operator and to all persons who submitted written or oral comments during the public comment period. Such notification shall include a written summary of the basis for determination.

(D) Coordination With Other Laws

The Garrard County Fiscal court shall, to the extent possible or as may be required, coordinate its review of petitions for site approval under this ordinance with the exercise of authority conferred upon it pursuant to any state or federal laws.

SECTION 4. FACILITY IMPACT REPORT

(A) Procedure

The owner/operator shall file with its petition for site approval a facility impact report, which shall include the following: an environmental impact report, a socioeconomic report, and a risk assessment. Each such section of the facility impact report shall be in type written form and shall address issues and matters as hereinafter set out.

The owner/operator shall publish notice of the availability of the facility impact report for examination and review at the Office of the Garrard County Judge/Executive, with such notice to be included in the public notice required in Section 2 (D) hereof with respect to the petition for site approval.

(B) Contents of the Facility Impact Report

(1) The facility impact report shall contain a socioeconomic report which shall include a comprehensive community inventory which shall identify the following:

- (a) The historic land use of the facility site;
- (b) Proximity of the facility site to residences, schools, churches, public parks, agricultural land, nursing homes, hospitals, cemeteries, historic structures, and infant care facilities.
- (c) A general profile of the business community located in the vicinity of the facility site including any sites planned for future industrial parks or sites being considered for any business or manufacturing facility;
- (d) Streets, highways and transportation facilities information including capacity and usage;
- (e) Cultural resources;
- (f) Population data and trends of the county and the vicinity of the facility site; and
- (g) A statement as to the impact on the community, including community perception, direct and indirect impact on the local economy and the economic growth, and an analysis of the impact on land values in the vicinity of the facility site, along with a survey of ground water users within one-half mile of the facility, including qualitative information of the wells

(2) The facility impact report shall contain an environmental impact report which shall identify existing environmental conditions in the vicinity of the facility site, with such report to include at a minimum:

- (a) A geological report with a description of the soil types to include soil permeability, stability, drainage, and the geology down through and include aquifer zones in the areas;
- (b) A hydrological report with a description of the hydrology and surface and groundwater quality and quantity in the area, including proximity to any aquifers and recharge areas and sensitive areas such as wet lands;
- (c) Proximity to public and private surface or ground water supplies, including current and potential future uses;
- (d) A biological report with a description of the presence or significantly threatened or endangered species;

- (e) An air quality report, including the characteristics (stability) of the atmosphere which affect the site and the present and projected population and the effects of emitted gases and odors in relation to the facility and prevailing wind;
- (f) Flood plain identification;
- (g) An archeological report with a description of historic archeological and natural sites and landmarks, outstanding resource waters, public forest areas, dedicated or designated open space, public recreational areas, wildlife refuges, gamelands and fishing waters.

To the extent the date and information included is a solid waste facility or site application is required by the provisions of Title 401 KAR, Chapter 38-40, Section 2, an archeological report with a description of the historic archeological and natural sites and landmarks, outstanding resource waters, public forest areas, wildlife refuges, gamelands and fishing waters. The owner/operator may submit a true and verified copy of the particular permit application submitted or to be submitted to the Cabinet, with respect to the facility.

- (3) The facility impact report shall include a risk assessment which shall quantitatively define the public health, safety and environmental risk associated with routine operations and upset conditions at the facility site. The scope and context of the impacts on the community will vary depending upon the nature, size, duration and extent of the activity to be conducted at the facility site. The risk assessment shall analyze those items as identified by the Garrard County Fiscal Court, which shall include the following:
 - (a) Risks associated with accidents in transportation, such analysis to include mode of transportation, route, schedule and frequency of deliveries, accident rate of mode and route, and the characteristics of structures and population, residential and non-residential, within the reasonably predicted impact area;
 - (b) Nature, extent, quantity, and impacts of routine releases to air, water, and land from all sources at the facility sites, including storm water run-off;
 - (c) Nature extent, quantity, and impact of releases to air, water, and land in upset conditions, including both

- historical data from comparable facilities and modeling reasonable worst-case upset conditions;
- (d) Adequacy of emergency services (police, fire, medical) to protect human health, safety and the environment from fire, explosion, flood, chemical release or any natural disaster, including emergency response capability and the owner/operator's emergency implementation plan;
 - (e) Projections of possible health effects with particular emphasis of occupational health, human health, chronic and acute exposure for both the facility and the surrounding area;
 - (f) Adequacy of transportation system in the event of an emergency, including an evacuation plan;
 - (g) A complete and accurate description of the actions and/or responses to be taken by the applicant relative to all of the risks as contained in the facility impact report including, but not limited to, the applicant's response to the potential consequences of failures or the containment and/or leachate collection systems and/or fires.

SECTION 5. OWNER/OPERATOR

The owner/operator shall, by certified check made payable to the Garrard County Court, submit fees in accordance with the following schedule:

- (A) At the time of submission of the petition for site approval and initial fee of \$20,000 is required. Fees would apply to a new facility or site and also to any petition for modification to expand and existing facility or site.
- (B) At the conclusion of the review process, the Garrard County Judge/Executive shall tender to actual costs incurred by the Garrard County Fiscal Court for the use of a consultant, which shall be payable upon receipt; and
- (C) The total fee shall not exceed the actual cost of the consultant and any other expenses incurred by the Garrard County Fiscal Court related to the petition.
- (D) If the petition is approved, an annual permit fee of \$10,000 will be paid to the Garrard County Fiscal Court. This permit fee will be paid annually on the date the original petition was approved.
- (E) If the petition is approved, the Garrard County Fiscal Court or designee will have the authority to make announced and or unannounced facility/site inspections. If violations are found, the owner/operator will be cited in accordance with the provisions of the current Garrard County Solid Waste Management Plan, current Garrard County Solid Waste Management Ordinance or other applicable laws or regulations.

The Garrard County Fiscal Court may utilize a qualified consultant to assist it in the evaluation of the petition for approval, and in reviewing the facility impact report and all other information considered as part of the review process. The \$20,000 fee paid pursuant to this section shall be used to defray the cost of expenses to the court to include, but not limited to, actual court costs, consultant costs, and oversight if the petition is approved.

SECTION 6. RECYCLERS, SCRAP DEALERS, & JUNK YARDS

All recyclers, scrap dealers, junk yards, and other similar establishments shall be governed by the provisions of the Garrard County Solid Waste Management Ordinance and shall be exempt from the requirements of this ordinance.

SECTION 7. TRANSFER STATIONS

All facilities permitted as a transfer station by the Kentucky Division of Waste Management shall be subject to the provisions of this section.

(A) Procedure for obtaining a county permit

- (1) Upon obtaining a transfer station permit from the Kentucky Division of Waste Management, parties shall submit in writing to the Garrard County Fiscal Court their intent to site a transfer station in the county.
- (2) Parties shall publish not less than twice a public notice in the newspaper of greatest circulation in the county describing the location and intent of the facility
- (3) Parties shall conduct a public hearing not less than thirty (30) days after the publish of the last public notice in the newspaper of greatest circulation in the county
- (4) The Solid Waste Coordinator or his/her designee shall attend the public hearing on the proposed facility
- (5) Upon completion of the public hearing, parties shall submit to the Garrard County Fiscal Court a copy of the valid state transfer station permit, copies of the public notices, detailed plans for the facility including volume and types of waste, all required fees, and any other documentation deemed appropriate by the Solid Waste Coordinator
- (6) The Garrard County Fiscal Court shall approve, deny, or modify the facility plans as presented by the parties

(B) Fees

- (1) All parties seeking a transfer station permit from the Garrard County Fiscal Court shall pay a permit application fee of \$250.

- (2) All approved transfer station permit holders shall pay an annual renewal fee of \$100

(C) General Provisions Pertaining to Transfer Station Permit Holders

- (1) All transfer stations shall maintain a neat appearance at all times.
- (2) All transfer stations shall remain free of offensive odors
- (3) All transfer stations shall be concealed from all roadways and other properties by an attractive screen such as a wooden privacy fence or concrete wall. Particle board, metal pieces, or other loosely-constructed material shall not be an acceptable screen.
- (4) The Garrard County Fiscal Court reserves the right to revoke a permit for violating the conditions of this section or violating the original plans for the facility as disclosed to and approved by the fiscal court.
- (5) The Solid Waste Coordinator shall have the authority to conduct spot-checks and other reviews of all facilities to ensure compliance