

Chapter 115

SOLID WASTE

[HISTORY: Adopted by the Town Council of the Town of South Berwick as indicated in article histories. Amendments noted where applicable.]

ARTICLE I
Disposal and Recycling Standards
[Adopted 7-9-1980¹]

§ 115-1. Title.

This article shall be known and may be cited as the "Solid Waste Disposal Control and Recycling Ordinance of the Town of South Berwick, Maine."

§ 115-2. Purpose; authority.

- A. Declaration of policy. This article is designed to control solid waste material in the Town of South Berwick, Maine, by providing for the establishment and enforcement of rules and regulations, establishing limitations, prohibiting certain acts causing solid waste disposal problems and providing for fines for violation of the provisions of this article.
- B. Authority for this article is 38 M.R.S.A. § 1304-B. **[Amended 8-26-1991]**

§ 115-3. Definitions. [Amended 12-8-2008]

In this article, the following terms shall have the following meanings:

ATTENDANT — Any person employed by the Town of South Berwick to supervise the solid waste transfer station and operate any necessary equipment.

BAGS — Official Pay As You Throw bags.

BULKY WASTE — Mattresses, box springs, furniture, tires and other waste materials accepted at the South Berwick Transfer Station, not including demolition debris, wood and yard waste.

COMMERCIAL WASTE — Solid waste generated by stores, offices, restaurants, warehouses, multi-unit rental units and condominiums within the Town. This definition applies to those designated by the Planning Board to provide for the disposal of all solid waste.

CONSTRUCTION AND DEMOLITION DEBRIS — Debris resulting from construction, remodeling, repair or demolition of structures, excluding asbestos and other special wastes. Sheetrock and shingles are not considered construction and demolition debris under this regulation.

HAZARDOUS WASTE — Any waste which the federal and/or state government(s) have determined to be hazardous in composition.

INDUSTRIAL WASTE — Solid waste generated by manufacturing facilities within the Town.

MERCHANT — Businesses that sell PAYT bags to South Berwick residents.

MSW — Municipal solid waste.

MULTIFAMILY RENTAL UNITS — Apartment buildings containing four or more units.

PAYT — "Pay As You Throw."

PRIVATE CONTRACTORS — A person, firm or corporation that accumulates, collects, stores, transports or disposes of more than one ton of waste per month.

PUBLIC — Residents of South Berwick.

RESIDENTIAL SOLID WASTE — Solid waste generated by residential households or dwelling units; this includes but is not limited to food scraps, garbage, trash, refuse and junk.

1. Editor's Note: The rules and regulations governing solid waste disposal, adopted 9-28-1987, are on file in the office of the Town Clerk.

TOWN — The Town of South Berwick.

TRANSFER STATION — The municipal facility located in South Berwick for the collection and processing of municipal solid waste, for eventual movement to another waste facility.

WHITE GOODS — Stoves, refrigerators, water tanks, washing machines, microwaves and other appliances without freon.

§ 115-4. Disposal control standards and regulations. [Amended 2-14-1994; 7-11-2005; 12-8-2008]

- A. The Town Council is hereby granted authority to establish detailed operating rules and regulations for all municipal solid waste collection and disposal facilities. The rules and regulations shall be reviewed and revised as required to satisfy needs of the municipality, changes in state and federal laws and regulations and the economics of municipal solid waste disposal. The rules and regulations shall include the operating hours of the facility. No person shall use the facility outside of said hours of operation without specific written consent of the South Berwick Town Council or its authorized agent, if any. The rules and regulations will become effective 15 days following adoption by the Town Council. Currently effective rules and regulations shall be prominently displayed at the transfer station site and on file in the municipal office.
- B. The use of the transfer station by any person shall be at the strict direction of the attendant designated by the Town Manager. No person shall violate any directives put forth by the attendant in the use of the facility. If any person refuses to obey a directive of the facility attendant, the attendant shall have the authority to immediately refuse access to the facility to that person.
- C. No hazardous waste shall be delivered to the transfer station.
- D. No industrial or commercial waste which creates a problem of disposal by virtue of federal, state or local statutes, rules, regulations, etc., controlling or prohibiting its disposal shall be delivered to the transfer station.
- E. The South Berwick solid waste transfer station is operated solely for the benefit of South Berwick residents and/or property owners. Admission to the transfer station will be by permit only. South Berwick residents and/or property owners will be issued permits without charge upon application to the municipal office. The Town Manager is authorized to issue temporary permits on a case-by-case basis. Residents and/or property owners must display a permit on their vehicle to gain access to the transfer station.
- F. All commercial and industrial businesses as defined in this article must contract with a private contractor to transport their waste to the MERC facility. No commercial or industrial waste will be permitted to be disposed of in the hopper at the transfer station.
- G. All private contractors must be properly licensed by the Town of South Berwick pursuant to § 115-16 of the Town of South Berwick's Flow Ordinance in order to collect MSW within the boundaries of South Berwick. Private contractors are responsible for the waste they collect and must dispose of it properly at the MERC facility as designated in § 115-13, Regulation of wastes.
 - (1) Private contractors will be billed by the Town of South Berwick for the tonnage they deliver to MERC according to the following fee schedule. Tonnage delivered to MERC shall be billed to the private contractor on a monthly basis, at the Town's contracted rate plus \$2/ton. A nominal administration fee shall be added to the invoice each month, not to exceed \$25.
 - (2) All invoices sent to the private contractor must be paid in full within 30 days of the date of invoice. Failure to pay the Town will result in a revocation of the company's ability to dispose of MSW under the Town's contract with MERC and shall result in the Town initiating collection proceedings. The private contractor shall be responsible for all collection costs.

§ 115-5. Recycling standards and regulations. [Amended 6-12-2006; 12-8-2008]

- A. All solid waste shall have recyclable commodities separated out and in a readily handleable form when brought to the transfer station. The list of acceptable recyclable materials shall be established, and may be revised from time to time, by order of the South Berwick Town Council.
- B. Safety requirements prohibit the removal of items from the wood or steel bins.
- C. All residential solid waste shall be delivered to the transfer station in PAYT bags as designated by the South Berwick Town Council. The Town will provide two bag sizes to choose from: fifteen-gallon; thirty-three-gallon.
- D. PAYT bags will be sold at various locations throughout the Town of South Berwick. Out-of-town merchants may also sell South Berwick PAYT bags.
- E. Merchants will purchase bags in bulk quantity and agree to sell the bags at cost. Merchants will be required to sign an agreement outlining these arrangements. These agreements will be kept on file in the Town Clerk's office.

§ 115-6. Violations and penalties. [Amended 12-8-2008]

Any person who violates any provision of this article commits a civil violation, punishable by a civil penalty of not less than \$200 and not more than \$2,500 for each violation. Penalties shall be recovered upon complaint made by the Town. Each day upon which a violation continues shall be considered a separate violation. The Town shall be entitled to recover its attorney's fees and court costs in any action in which the court finds that a violation has occurred. In addition to penalties, the Town may seek injunctive relief to prevent the continuance of an ongoing or recurring violation. The Town may also pursue any of the remedies set forth in Subsections A, B and C below:

- A. Roadside littering. Any person found to have littered public or private property with MSW, construction and demolition debris, bulky waste, tires or any other trash will be prosecuted by the Police Department in accordance with Title 17 M.R.S.A. Chapter 80, Litter Control.
- B. Public health. Any individual who is found to be accumulating solid waste in an unapproved location which is deemed to be injurious to the public health and safety by the South Berwick Health Officer shall be dealt with in the following manner:
 - (1) Written warning, with seven days to remove trash.
 - (2) If after seven days the trash has not been removed, the Health Officer may cause the removal of the solid waste. All costs associated with the removal of the solid waste shall be billed to the property owner.
 - (3) Failure to pay the costs for the removal of the solid waste will constitute a lien against the real estate enforceable in the same manner as real estate taxes, including possible loss of the property for nonpayment.
- C. Unacceptable materials. Any person caught throwing unacceptable materials in the hopper, bulky waste, construction debris or other designated area of the transfer station shall be prosecuted in the following manner:
 - (1) First offense: verbal warning from staff, documented on a form approved by the Town Manager
 - (2) Second offense: written warning from the Town Manager.
 - (3) Third offense: loss of privileges to use transfer station as determined by the Town Council.

§ 115-7. Conflict with other provisions.

In any case where a provision of this article is found to be in conflict with a provision of any other ordinance or code of the Town of South Berwick existing on the effective date of this article, the provision which establishes the

higher standard for the promotion and protection of health and welfare for the community shall prevail.

ARTICLE II
Flow Control
[Adopted 3-9-1987]

§ 115-8. Title.

This article shall be known as the "Town of South Berwick, Maine, Solid Waste Flow Control Ordinance."

§ 115-9. Authority. [Amended 8-26-1991]

This article is enacted pursuant to the authority granted in 30-A M.R.S.A. §§ 3001 through 3007, 3351 and 3352.

§ 115-10. Purpose.

- A. The municipality has a statutory obligation to provide a solid waste disposal facility for domestic and commercial waste generated within the municipality and is authorized to provide such a facility for industrial waste and sewage treatment plant sludge, pursuant to 38 M.R.S.A. § 1305, Subsection 1. Municipal solid waste contains valuable recoverable resources, including energy, which, if recovered, reduce the cost of solid waste disposal. Because energy recovery technology is complex, most energy recovery facilities have high capital costs and long payback periods. To remain cost-effective and operate efficiently during their useful lives, energy recovery facilities require a guaranteed steady supply of waste during their entire useful life. Consequently, a municipality that wants to utilize an energy recovery facility for processing municipal solid wastes generally must agree to provide the facility with a steady supply of solid waste for a relatively long period.
- B. The municipality must exercise its legal authority to control the collection, transportation and disposal of solid waste generated within its borders to ensure delivery of a steady supply of waste to the energy recovery facility designated herein. The municipality finds that use of an energy recovery facility to process acceptable solid waste is an environmentally sound and economically viable solution to the solid waste disposal problem and thereby protects the public health, welfare and safety of the citizens of the municipality.

§ 115-11. Definitions and word usage.

- A. All terms not specifically defined herein shall have their ordinary meanings; words used in the present tense include the future, and the plural includes the singular.
- B. As used herein, the following terms shall have the meanings indicated:

ACCEPTABLE WASTE — All solid wastes of the type presently accepted at the transfer station used by the municipality, including all ordinary household, municipal, institutional, commercial and industrial wastes, with the following exceptions:**[Amended 12-8-2008]**

- (1) Demolition or construction debris from building and roadway projects or locations.
- (2) Liquid wastes or sludges.
- (3) Abandoned or junk vehicles.
- (4) Hazardous waste, that is, waste with inherent properties that make it dangerous to manage by ordinary means, including but not limited to chemicals, explosive, pathological wastes, radioactive wastes, toxic wastes and other wastes defined as hazardous by the State of Maine or the Resource Conservation and Recovery Act of 1976, as amended, or other federal, state or local laws, regulations, orders or other actions promulgated or taken with respect thereto.
- (5) Dead animals or portions thereof or other pathological wastes.

- (6) Water treatment residues.
- (7) Tree stumps.
- (8) Tannery sludge.
- (9) Waste oil.
- (10) Discarded white goods, including but not limited to freezers, stoves, refrigerators and washing machines.

COLLECTION FACILITY — A building or container or designated area in which acceptable waste is deposited and temporarily stored for transfer to the energy recovery facility. **[Amended 12-8-2008]**

DISPOSAL FACILITY — The facilities designated by the municipality as the storage and/or disposal sites for unacceptable wastes.

ENERGY RECOVERY FACILITY — The facility designated herein which processes and recovers energy and/or useful materials from acceptable waste generated in the municipality.

MUNICIPALITY — The Town of South Berwick, Maine.

UNACCEPTABLE WASTE — All solid waste of the type municipalities are required to regulate by 38 M.R.S.A. § 1305, as amended, which specifically excludes industrial and sewage treatment plant sludge, and not included in the definition of "acceptable waste."

§ 115-12. Designation of facility.

- A. In accordance with the provisions of 38 M.R.S.A. § 1304-B, the municipality hereby designates the Maine Energy Recovery Company facility located in Biddeford, Maine, as the energy recovery facility and disposal facility for acceptable waste.
- B. The Town also designates a municipally owned and operated transfer station on Agamenticus Road in South Berwick, whose operation shall be conducted in accordance with the rules and regulations of the Maine Department of Environmental Protection and the Town of South Berwick Solid Waste Disposal Control and Recycling Ordinance,² as the temporary disposal facility for acceptable waste.
- C. The Town further reserves that it may designate an alternate disposal facility for a specified time period for acceptable waste, should circumstances require it, upon a majority vote of the municipal officers.

§ 115-13. Regulation of wastes.

The accumulation, collection, transportation and disposal of acceptable waste and unacceptable waste generated within the municipality shall be regulated in the following manner:

- A. All acceptable waste generated within the municipality shall be deposited at the municipal transfer facility or directly at the energy recovery facility.
- B. All unacceptable waste generated within the municipality shall be deposited only at a suitable disposal facility which is designed for the express purpose of handling said unacceptable waste.

§ 115-14. Exempted waste.

The following categories of waste shall be exempted from regulation by this article:

- A. Materials from manufacturing, processing or packaging operations which are segregated from solid waste and

2. Editor's Note: See Art. I, Disposal and Recycling Standards, of this chapter.
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salvaged for alternate use or reuse by the generator or sold to third parties.

- B. Glass, metal or other noncombustible materials which are separated from acceptable waste by the generator as part of a recycling program approved by municipal officers.
- C. Cardboard, paper or other combustible materials which are separated from acceptable waste by the generator as part of a recycling program approved by the municipal officers, provided that any such recycling program shall not reduce the Btu content of acceptable waste below the Btu level acceptable to the energy recovery facility.

§ 115-15. Administration.

This article shall be administered by the municipal officers. Their powers and duties are as follows:

- A. To adopt reasonable rules and regulations as needed to enforce this article.
- B. To consider all license applications and to grant or deny each application within 15 days after receipt of a completed application at the municipal offices or within such other time as the municipal officers and the applicant shall agree is reasonable.
- C. To review any alleged violation of this article and to impose appropriate penalties therefor after notice and hearing as required by this article.
- D. To institute necessary proceedings, either legal or equitable, to enforce this article.

§ 115-16. License required; application.

- A. No person, firm or corporation shall accumulate, collect, store, transport or dispose of acceptable waste or unacceptable waste generated within the municipality without obtaining a license from the municipal officers, except that a person, firm or corporation that accumulates, collects, stores, transports or disposes of less than 1/4 ton (500 pounds) per month of its own waste shall not be required by this section to obtain such a license. **[Amended 12-8-2008]**
- B. Any person, firm or corporation required by this article to obtain a license shall make application to the municipal officers, providing the information required. Each application shall be accompanied by a nonrefundable one-time application fee of \$250. **[Amended 12-8-2008]**
- C. The application shall contain all information required by the municipal officers, including but not limited to a description of the activity(ies) engaged in, e.g., collection, transport or disposal of acceptable and/or unacceptable waste; types and amount of waste handled in each service area; a description of the facility(ies) operated and used; and an equipment inventory, including, for vehicles, a description of the make, model and year of each vehicle used for collection or transportation of solid waste. All information provided shall be revised annually upon application for license renewal. If the municipal officers determine the application is incomplete, they shall notify the applicant, in writing, of the specific information necessary to complete it. The municipal officers shall be informed immediately, in writing, of any changes in or additions to equipment, including vehicles.
- D. Licenses shall not be transferable. In the event of an emergency or vehicle breakdown, a licensee shall be issued a special license for a satisfactory replacement vehicle upon the furnishing of all information required for a licensed vehicle.
- E. All licenses shall expire one year from the date of issue unless otherwise stated on the license or revoked or suspended sooner in accordance with the provisions of this article.
- F. Annual renewal license fees shall be \$100, with an additional fee of \$50 for each vehicle licensed or \$50 for each applicant licensed for activities not involving the transport of solid waste. License fees shall be prorated

based upon the number of months for which the license is issued. License fees shall not be refunded in the event that a license is suspended or revoked. [Amended 12-8-2008]

- G. In the event that the municipal officers deny a license application, they shall notify the applicant, in writing, and shall state the reasons for the denial. The applicant may request a public hearing in accordance with the procedures in § 115-18.

§ 115-17. Suspension or revocation of license.

Any license issued may be suspended or revoked by order of the municipal officers after benefit of a hearing in accordance with the procedures in § 115-18 for the following causes:

- A. Violation of this article.
- B. Violation of any provision of any state or local law, ordinance, code or regulation which relates directly to the provisions of this article.
- C. Violation of any license condition(s).
- D. Falsehoods, misrepresentations or omissions in the license application.

§ 115-18. Hearing procedure.

- A. Anyone denied a license or whose license is suspended or revoked pursuant to § 115-17 shall be entitled to a hearing before the municipal officers, if such request is made, in writing, within 30 days of the denial, suspension or revocation.
- B. Such hearings shall be held within 30 days after receipt of the written request for a hearing.
- C. The licensee or applicant shall be notified, in writing, as to the time and place of the hearing at least 10 days prior to the hearing date. The applicant or licensee has the right to be represented by counsel, to offer evidence and to cross-examine witnesses.
- D. A determination shall be made by the municipal officers within 10 days after the conclusion of the hearing, and notice of the decision shall be served upon the applicant or licensee by registered mail, return receipt requested.
- E. The municipal officers' final determination relative to the denial or suspension or revocation of a license and the period of suspension or revocation shall take effect as provided in the notice but no later than 10 days after the date notice of such final determination has been mailed by registered mail, return receipt requested, to the applicant and shall be conclusive. Notice of the final determination shall set forth the reasons for the denial, suspension or revocation and the effective dates thereof, together with a statement that such decision may be appealed as provided in this article.
- F. Any controversy or claim arising out of or relating to the municipal officers' determination shall be directly reviewable by the Superior Court pursuant to M.R. Civ. P., Rule 80B.

§ 115-19. Enforcement.

- A. All provisions of this article are enforceable by duly authorized police officers and the municipal officers.
- B. Any person who violates any provision of this article is subject to arrest and, if convicted, to punishment as provided in § 115-20.
- C. Whenever the municipal officers determine that there has been a violation by virtue of noncompliance, they shall give notice of such violation to the person(s) responsible by personal service or by registered mail, return receipt requested.

- (1) The citation shall include a statement of reasons and shall allow reasonable time for performance of any act it requires.
- (2) The citation may contain an outline of remedial action which, if taken, will effect compliance.
- (3) The citation shall state that unless corrections are made within the allotted time, the violator is subject to prosecution and/or to license revocation or suspension pursuant to the provisions of this article.

§ 115-20. Violations and penalties.

- A. Criminal penalties. Any person who violates this article shall be guilty of a Class E crime for each violation.
- B. Any person who violates any provision of this article commits a civil violation, punishable by a civil penalty of not less than \$200 and not more than \$2,500 for each violation. Penalties shall be recovered upon complaint made by the Town. Each day upon which a violation continues shall be considered a separate violation. The Town shall be entitled to recover its attorney's fees and court costs in any action in which the court finds that a violation has occurred. In addition to penalties, the Town may seek injunctive relief to prevent the continuance of an ongoing or recurring violation. **[Amended 12-8-2008]**

§ 115-21. Variances.

The municipal officers may, on written application, grant a variance from a specific provision of this article in a specific case, subject to appropriate conditions, where such variance is in harmony with the general purpose and intent of this article and the agreement between the municipality and the energy recovery facility.

§ 115-22. Amendment procedure.

This article may be amended in the same manner as any other ordinance of the municipality, subject to the contractual obligations outlined in the contract between the municipality and the energy recovery facility.

§ 115-23. When effective.

This article shall become effective April 7, 1987, except that provisions dependent upon the energy recovery facility designated herein shall become effective on the date that the energy recovery facility begins commercial operations, provided that the municipality provides notice of commencement in the manner required for publication of ordinances. Any person, firm or corporation required to obtain a license hereunder shall have 30 days from the date of adoption of this article to secure such license, which shall become effective on the date specified therein.

§ 115-24. Effective date of amendments. [Added 12-8-2008]

Because the Town's new Pay As You Throw system is scheduled to commence on January 1, 2009, and because that system will be implemented and governed by the amendments to Chapter 115, Articles I and II, enacted by the Town Council on December 8, 2008, the Town Council finds and declares that an emergency exists within the meaning of Article II, Section 11, of the Charter, and therefore said amendments shall take effect on January 1, 2009.

