



RANDOLPH COUNTY BOARD OF COMMISSIONERS

Randolph County Office Building ■ 725 McDowell Road
Asheboro, North Carolina 27205 ■ Telephone: (336)318-6300

AN ORDINANCE ESTABLISHING PROCEDURES FOR THE APPLICATION AND ISSUANCE OF FRANCHISES FOR SOLID WASTE FACILITIES IN RANDOLPH COUNTY

WHEREAS, N.C. Gen. Stat. §153A-136 provides that counties may, by ordinance, regulate the storage, collection, transportation, use, disposal, and other disposition of solid wastes; and

WHEREAS, N.C. Gen. Stat. §153A-136 further provides that counties may regulate solid waste by granting a franchise to one or more persons for the exclusive right to commercially collect or dispose of solid wastes within all or a defined portion of the county and prohibit any other person from commercially collecting or disposing of solid wastes in that area; and

WHEREAS, N.C. Gen. Stat. §153A-136 further provides that the board of commissioners may set the terms of any franchise and regulate solid waste fees as authorized by this section; and

WHEREAS, N.C. Gen. Stat. §130A-294(b1)(2) establishes procedures governing the process by which franchises for solid waste facilities are considered and issued; and

WHEREAS, franchises for solid waste facilities are necessary for the protection of public health and safety.

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the County of Randolph, State of North Carolina, that:

Section 1. Definitions.

For the purposes of this ordinance, the following words, phrases, and terms shall have the meaning provided herein, not inconsistent with definitions provided by the North Carolina General Statutes and Administrative Rules. Words, phrases or terms not defined herein shall have the same meaning as applied by North Carolina General Statute or Administrative Rules; if not so defined, then the word, phrase or term shall have the definition commonly applied within the industry; and words, phrases and terms not common to the solid waste industry shall have the same meaning as found in the latest edition of Webster's Dictionary.

(a) "Closure" shall mean the cessation of operation of a solid waste management facility and the act of securing the facility so that it will pose no significant threat to human health or the environment.

(b) "Construction" or "demolition" or "C&D" when used in connection with "waste" or "debris" shall mean solid waste resulting solely from construction, remodeling, repair, or

demolition operations on pavement, buildings, or other structures, but does not include inert debris, land-clearing debris or yard debris.

(c) "County" shall mean either the geographical territory of the Randolph County or the County as a political subdivision of the State of North Carolina acting through its Board of Commissioners, administrative personnel or other employees.

(d) "Disposal" shall mean the discharge, deposit, injection, dumping, spilling, leaking or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

(e) "Facility Plan" shall mean the plan for the construction and operation of the facility submitted to NCDENR, either as a preliminary plan, final plan or revised plan.

(f) "Franchise" shall mean an ordinance adopted by Randolph County pursuant to authority granted by N.C. Gen. Stat. §§153A-136 and 130A-294 which governs the types and amounts of solid waste a person or company is allowed to dispose in a solid waste facility in Randolph County, the territory from which that waste is allowed to be collected and transported, the procedures to be followed for governmental oversight, and the terms of any franchise fees to be paid to Randolph County. A franchise may be issued without an operating agreement, in conjunction with an operating agreement, or preliminary to an operating agreement with the person or company who has been issued the franchise.

(g) "Franchise Fee" shall mean the payment to Randolph County from the person to whom a franchise has been issued, payable in amounts and intervals as determined by the terms of the franchise.

(h) "Franchise territory" shall mean the geographic area, expressed in terms of distance from a fixed point or through a listing of counties within the territory, from which the franchisee may collect solid waste for transport and disposal within Randolph County.

(i) "Gas to Energy" shall mean the process by which landfill gases are converted to any form of useable energy under any technology.

(j) "Inert debris" shall mean solid waste which consists solely of material that is virtually inert and that is likely to retain its physical and chemical structure under expected conditions of disposal.

(k) "Land-clearing debris" shall mean solid waste which is generated solely from land-clearing activities.

(l) "Landfill" shall mean a disposal facility or part of a disposal facility where waste is placed in or on land and which is not a land treatment facility, a surface impoundment, an injection well, a hazardous waste long-term storage facility or a surface storage facility.

(m) "Municipal solid waste" shall mean any solid waste resulting from the operation of residential, commercial, industrial, governmental, or institutional establishments that would normally be collected, processed, and disposed of through a public or private solid waste management service. Municipal solid waste does not include hazardous waste, sludge, industrial waste managed in a solid waste management facility owned and operated by the generator of the industrial waste for management of that waste, or solid waste from mining or agricultural operations.

(n) "Municipal solid waste management facility" shall mean any publicly or privately owned solid waste management facility permitted by NCDENR that receives municipal solid waste for processing, treatment, or disposal.

(o) "NCDENR" shall mean the North Carolina Department of Environment and Natural Resources, whether acting through any of its divisions or personnel, and its successor agency or agencies.

(p) "Operator" shall mean any person, including the owner, who is principally engaged in, and is in charge of, the actual operation, supervision, and maintenance of a solid waste management facility and includes the person in charge of a shift or periods of operation during any part of the day.

(q) "Person" shall mean an individual, corporation, company, association, partnership, unit of local government, State agency, federal agency or other legal entity.

(r) "Population" shall mean the number of persons within any geographical territory as determined by the most recently published data from the U.S. Census Bureau or more recent data published by the U.S. Government.

(s) "Recovered material" shall mean a material that has known recycling potential, can be feasibly recycled, has been diverted or removed from the solid waste stream for sale, use, or reuse, and meets the requirements of G.S. 130A-309.05(c).

(t) "Recyclable material" shall mean those materials which are capable of being recycled and which would otherwise be processed or disposed of as solid waste.

(u) "Recycling" shall mean any process by which solid waste, or materials which would otherwise become solid waste, are collected, separated, or processed, and reused or returned to use in the form of raw materials or products.

(v) "Refuse-derived fuel" shall mean fuel that consists of municipal solid waste from which recyclable and noncombustible materials are removed so that the remaining material is used for energy production.

(w) "Resource recovery" shall mean the process of obtaining material or energy resources from discarded solid waste which no longer has any useful life in its present form and preparing the solid waste for recycling.

(x) "Solid waste" shall mean any hazardous or nonhazardous garbage or refuse; sludge from a waste treatment plant, water supply treatment plant or air pollution control facility; domestic sewage and sludges generated by the treatment thereof in sanitary sewage collection, treatment and disposal systems; and other material that is either discarded or is being accumulated, stored or treated prior to being discarded, or has served its original intended use and is generally discarded, including solid, liquid, semisolid or contained gaseous material resulting from industrial, institutional, commercial and agricultural operations, and from community activities. The term does not include the types of waste excluded under N.C. Gen. Stat. § 130A-290.

(y) "Useful life" shall mean a reasonable calculation prepared by a licensed engineer projecting the number of years the landfill should have capacity to receive solid waste from the franchise territory plus any additional years that the landfill should be expected to generate energy from landfill gas or other known methods or technologies.

(z) "Waste stream" shall mean (1) the totality of solid waste collected from the franchise territory and transported to and disposed in the solid waste facility during its useful life; and (2) the totality of solid waste which is transported to the solid waste facility for recycling and which leaves the facility either for further treatment or processing elsewhere or as market product.

(aa) "Yard trash" shall mean solid waste consisting solely of vegetative matter resulting from landscaping maintenance.

Section 2. Sanitary Landfill Franchise Required.

No sanitary landfill or other solid waste facility shall be operated within Randolph County without a franchise granted pursuant to this ordinance. Facilities exclusively limited to the disposal of yard waste, inert debris or land-clearing debris, and existing solid waste facilities already permitted by the State of North Carolina, are exempt from this ordinance.

Section 3. Term of Franchise.

The term of a franchise shall be stated in the franchise, but shall not exceed thirty (30) years. At any time during the two (2) remaining years of an existing franchise the franchisee may, upon proper application, request an extension of the franchise. In no event may the renewal term and the remaining months or years of the existing franchise exceed a total of thirty (30) years.

Section 4. Franchise May be Exclusive

A franchise may be exclusive for certain types of waste. The issuance of an exclusive franchise for certain types of waste shall not preclude the issuance by the county of franchises for other types of waste.

Section 5. Contents of application.

An application for a franchise shall include the following information:

(1) The qualifications of the applicant to operate a sanitary landfill or other type of solid waste facility, including information concerning the applicant's legal and financial status; the applicant's character, experience, and business reputation; technical expertise; and any other information relevant to the applicant's qualifications. The County reserves the right to seek additional information that, in its discretion, is necessary to determine the applicant's qualifications.

(2) A statement of the population to be served, including a description of the geographic area.

(3) A description of the volume and characteristics of the waste stream entering the solid waste facility, including all recovered and recyclable materials and any recycled products or other waste shipped from the facility.

(4) A projection on the useful life of the landfill.

(5) A description of the means and routes of transportation for each part of the waste stream.

(6) A demonstration of the franchise applicant's qualifications and experience and financial assurances.

(7) A description of any activities involving recycling, resource recovery, refuse-derived fuel and/or gas-to-energy production.

Section 6. Grant of franchise.

Public notice and public hearings related to issuance of a franchise shall be consistent with N.C. General Statute § 130A-294.

Upon review of the application and consideration of any other information or factors it deems relevant, the Board of Commissioners may issue or deny a franchise in its sole and complete discretion, and upon issuance of a franchise it may include whatever requirements, restrictions, or provisions it deems advisable and in the public interest, including such fees or payments to be made to the county.

Section 7. Transfer of ownership or control.

(a) Franchise non-transferrable. A franchise cannot be sold, transferred, leased, assigned, acquired or disposed of, including, but not limited to, by force or voluntary sale, merger, consolidation, acquisition, bankruptcy, receivership or other means to any other person or entity except upon consideration and approval of the Board of Commissioners.

(b) Transfer threshold. The franchisee shall promptly notify the county of (1) any actual or proposed change in or transfer of the franchisee's ownership or (2) acquisition by any other party

of control of the franchisee. The word "control" as used herein is not limited to majority ownership but also includes operational control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred shall arise upon the disposal by the franchisee, directly or indirectly, by gift, assignment, voluntary sale, merger, consolidation devise or otherwise, of at least 50 percent ownership or controlling interest in the franchisee at one time or cumulatively over the term of the franchise to a person or group of persons, corporation, partnership, limited partnership, trust, limited liability, or company association. Any two or more persons or entities which cumulatively own more than fifty (50) per cent of the franchise and act in concert shall be considered one entity owning a majority interest.

(c) Suspension and Re-application. The transfer, sale, lease, assignment or disposition of control of the grantee, including, but not limited to, by force or voluntary sale, merger, consolidation, receivership or other means, shall make the franchise subject to cancellation unless and until the county shall have consented thereto. For the purpose of determining whether it shall consent to such transfer, sale, lease, assignment or disposition of control of the grantee, the county may inquire into the legal, financial, character, technical and other public interest qualifications of the prospective controlling party, and the proposed grantee shall assist the county in any such inquiry. Failure to provide all information reasonably requested by the county as part of its inquiry may be grounds for denial of the proposed franchise transfer. After considering the legal, financial, character, technical, and other public interest qualifications of the applicant, the county may transfer and assign the rights and obligations of such franchise as may be in the public interest. The consent of the county to such transfer shall not be unreasonably withheld.

(d) Signatory requirement. Any approval by the county or transfer shall be contingent upon the prospective controlling party becoming a signatory to the franchise and any operating agreement or other agreement as required by the county.

(e) Permits. The requirements of the State of North Carolina pertaining to solid waste permits are separate requirements.

Section 8. Forfeiture or Revocation.

(a) Grounds of revocation. The county reserves the right to revoke any franchise granted hereunder, and to rescind all rights and privileges associated with the franchise in accordance with the procedures set forth herein, in the following circumstances, each of which represents a default and breach under this chapter and the franchise grant:

(1) Grantee's default in the performance of any of the material obligations under this chapter or the franchise or under such documents, operating agreements or other contracts entered into by and between the county and the grantee.

(2) Grantee's violation of any orders or rulings of any regulatory body having jurisdiction over the grantee after notice thereof, continuing and not being remedied or reasonably addressed within 60 days of notice.

(3) Grantee's fraud or any unfair or deceptive act or practice with regard to the county or the public under the laws of the state.

(4) Grantee's insolvency, inability, or unwillingness to pay its debts; or grantee is adjudged bankrupt.

(5) Grantee's misrepresentation of a material fact in the application for, or negotiation of the franchise or any extension or renewal thereof.

(b) Procedure prior to revocation.

(1) The county shall make written demand that the grantee comply with any material requirement, limitation, term, condition, rule or regulation or correct any action deemed cause for revocation. If the failure, refusal or neglect of the grantee continues for a period of 30 days following such written demand, the county shall place its intent to revoke the franchise upon a regular county commissioner meeting agenda. The county shall cause to be mailed by certified mail to grantee at least 10 days prior to the date of such meeting, a written notice of intent to revoke and the reasons therefore, and the time and place of the meeting, notice of which shall be published by the county clerk at least once 10 days before such meeting in a newspaper of general circulation within the county.

(2) The County Board of Commissioners shall hear any persons interested therein, and shall determine in its discretion, whether or not any breach, failure, refusal or neglect by the grantee was with just cause.

(3) If such breach, failure, refusal or neglect by the grantee was with just cause, as reasonably determined by the county, the County Board of Commissioners shall direct the grantee to comply within such time and manner and upon such terms and conditions as are reasonable.

(4) If the County Board of Commissioners shall determine that such breach, failure, refusal or neglect by the grantee was without just cause, then the County Board of Commissioners shall, by resolution, declare that the franchise of the grantee shall be revoked.

Section 9. Equal Opportunity Policy.

The franchisee shall afford equal opportunity employment to all qualified persons, and no person shall be discriminated against in employment because of race, color, religion, age, national origin, sex, or disability. The franchisee shall comply with all equal opportunity provisions enacted by federal, state and local authorities.

Section 10. Notices.

All notices from franchisee to the county pursuant to this chapter and franchise shall be to the county manager or his/her designee. Franchisee shall maintain with the county throughout the term of the franchise, an address for service of notices by mail, which address shall be noted in the franchise agreement.

Section 11. No recourse against the grantor.

Except when seeking equitable relief, the grantee shall have no recourse whatsoever against the county or its officials, boards, commissions, agents, or employees for any loss, cost, expense or damage arising out of any provision or requirements of the franchise or because of the enforcement of this chapter or the franchise.

Section 12. Incorporation of provisions.

The requirements of this ordinance shall be binding on the grantee of a franchise whether or not the terms are incorporated into the franchise itself or any operating agreements or other contracts.

Section 13. Effective Date.

This Ordinance shall become effective on December 2, 2013.

Upon motion of Commissioner Kemp, seconded by Commissioner Lanier, the foregoing Ordinance was passed by the following vote:

AYES: 4

NOES: 1

I, Cheryl A. Ivey, Clerk to the Randolph County Board of Commissioners, do hereby certify that the following Ordinance was first introduced at the November 4, 2013 regular meeting of the Randolph County Board of Commissioners, a quorum being present, and duly adopted at the December 2, 2013 regular meeting of the Randolph County Board of Commissioners, a quorum being present.

This the 2nd day of December, 2013

Cheryl A. Ivey
Cheryl A. Ivey, Clerk to the Board
Randolph County Board of Commissioners