

AN ORDINANCE REGULATING THE SITING AND OPERATION OF SOLID WASTE MANAGEMENT FACILITIES.

WHEREAS, the Supreme Court of the Commonwealth of Kentucky has recognized and affirmed that, through KRS Chapters 67, 109 and 224 the Kentucky "General Assembly has placed in the counties primary responsibility and authority for the exclusive management of solid waste" and;

WHEREAS, the Fiscal Court of Hopkins County has determined that the enactment of an ordinance governing the siting and operation of solid waste management facilities within the county is a necessary and appropriate exercise of the police powers of the county in order to prevent creation of nuisances, assure public protection and vector control, and to assure conservation, preservation and enhancement of natural resources, and is a legitimate regulation of commerce for the protection and convenience of the public; therefore

BE IT ORDAINED by the Fiscal Court of Hopkins County:

SECTION 1: DEFINITIONS

(A) The terms "cabinet," "solid waste," "solid waste management facility," "waste site or facility," "key personnel," "person", "closure", "closure care", "postclosure" and "administratively complete" shall have the same meaning as provided in KRS 224.01-010 and the regulations adopted thereunder.

(B) As used in this ordinance, "facility" means "solid waste management facility."

SECTION 2: PROHIBITION

(A) No person shall construct a solid waste management facility until a certificate of facility site approval has first been obtained from the Hopkins County Fiscal Court or its agents pursuant to this ordinance.

(B) All provisions of this Ordinance apply to: (i) any solid waste management facility that has received a construction permit from the cabinet but has not commenced continuous construction of the facility as of the date of enactment of this ordinance; (ii) all expansions of existing permitted facilities; and (iii) any facility for which a permit or authorization has not been obtained from the cabinet as of the effective date of this ordinance.

(C) All lawful solid waste management facilities holding a construction permit from the cabinet as of the effective date of this ordinance which have commenced continuous construction of the facility as of the date of enactment of this ordinance shall, within sixty (60) days after the effective date of this ordinance, comply with the informational, bonding and insurance requirements of Section 3(B)(1 through 6, 10, 13 and 14) of this ordinance but shall not be required to obtain a site approval certificate; however compliance with all requirements of the ordinance including obtaining a siting certificate shall be required for any expansions of such a facility.

### SECTION 3: SITE APPROVAL PROCESS

(A) Any person proposing to construct a solid waste management facility shall file a request for a certificate of site approval with the Hopkins County Fiscal Court at the office of the County Judge/Executive prior to commencement of construction of the facility.

(B) The request for a certificate of site approval shall include:

(1) The name and address of the person proposing to construct and operate the solid waste management facility and the location, (including street address, if any) of the proposed site of the facility;

(2) A copy of the deed or other document establishing the right, title and interest of the person proposing to construct a solid waste management facility in the proposed site of the facility and documenting the authority of the person to enter the property and perform any necessary corrective action during facility closure and post-closure;

(3) A current USGS map showing the location of the proposed site, at a scale of one (1) inch equals two thousand (2,000) feet, with said map showing the entire boundaries of the site or proposed site;

(4) A description of the type of solid waste to be managed, the sources of the solid waste, and a description of the management activities proposed to be conducted at the site;

(5) A copy of all information required by KRS 224.40-330 to be filed with respect to each key personnel, which shall be updated as any changes or updates of key personnel information are filed with the Cabinet.

(6) Financial data demonstrating that the applicant has the financial capability to undertake all regulatory obligations relating to construction, operation, closure and post-closure care and corrective action at the proposed facility, including:

(a) Evidence of liability insurance. Each facility for the land disposal of solid waste shall maintain during the operation of the facility and any applicable post-closure care period a Commercial General Liability Policy with limits of liability no less than one million dollars (\$1,000,000). The policy shall cover any damages for bodily injury or property damage as a result of an occurrence arising from the construction or operation of the landfill. The facility shall provide to the County, on an annual basis, a certificate evidencing that the policy remains in effect. The County shall be listed on the policy to receive notice from the insurance company of any cancellation, reduction in coverage, change in coverage, claim, or of any event of whatever kind or nature which might impair the ability of the policy holder to comply with the provisions of this ordinance.

(b) Evidence of Environmental Remediation Legal Liability Insurance. Each facility for the land disposal of solid waste shall maintain during the operation of the facility and any applicable post-closure

care period an Environmental Remediation Legal Liability Policy with limits of liability no less than ten million dollars (\$10,000,000). The policy shall cover any losses which the facility becomes legally liable to pay as a result of pollution conditions on, at, under or emanating from the Landfill. The County shall be listed on the policy to receive notice from the insurance company of any cancellation, reduction in coverage, change in coverage, claim, or of any event of whatever kind or nature which might impair the ability of the policy holder to comply with the provisions of this ordinance.

(c) The insurance obligations identified in subsections (a) and (b) may be satisfied by evidence that the facility has been added as an insured facility under a blanket liability or pollution remediation policy, as applicable.

(d) A statement as to whether the person proposing to construct a solid waste management facility 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 of the site or sites involved, and a description of the persons involvement in the facility and potential liability for remedial obligations at such site or facility;

(7) A Facility Impact Report (FIR) in accordance with Section 5 of this ordinance;

(8) A copy of the public notice of the right to submit comments to the Hopkins County Fiscal Court pursuant to subsection (d) hereof;

(9) Evidence of notification by certified mail to adjoining property owners of the site of the intention to submit to the Hopkins County Fiscal Court a petition for site approval of a solid waste management facility. Property owners include:

(a) Property owners immediately adjacent to the site;

(b) Persons owning property in Hopkins County along transportation corridors providing direct access to the site which are within a one mile radius of the site;

(10) The following certification:

"I certify that I have personally examined and am familiar with the information submitted in this and all attached documents, and that based on my inquiry of those individuals responsible for obtaining the information, I believe the submitted information is true, accurate and complete."

The certification shall be signed by the person proposing to construct and operate a solid waste management facility where:

(a) If the person proposing to construct a solid waste management facility is a corporation, by an authorized executive officer; or

(b) If the person proposing to construct a solid waste management facility is a partnership, by an authorized general partner; or

(c) If the person proposing to construct a solid waste management facility is a sole proprietor, by the proprietor; or

(d) If the person proposing to construct a solid waste management facility is a governmental agency, by the head of that agency.

(e) If the person proposing to construct a solid waste management facility is a limited liability company, by its members and/or manager.

(11) The person proposing to construct a solid waste management facility shall remit the siting fee or fees under section 6 of this ordinance at the time of filing a request for a certificate of site approval.

(12) Any information submitted to the Hopkins County Fiscal Court pursuant to this Ordinance may be claimed confidential by the applicant. Any such claim must be asserted at the time of submission by stamping the words "confidential business information" on each page containing such information. If no claim is made at the time of submission, the Hopkins County Fiscal Court shall make the information available to the public without further notice. If a claim is asserted, the information so marked will be treated in as confidential business information accordance with the procedures in KRS 224.10-210, which are adopted herein by reference. Claims that the name and address of any person proposing to construct a solid waste management facility or the type of waste to be disposed of at the landfill is confidential will be denied.

(13) A complete copy of any information submitted to the cabinet relating to the construction or operation of the solid waste management facility, including the information required by Title 401 KAR, Chapters 47 and 48. To the extent that the information provided in an application for a permit or other authorization from the Cabinet satisfies the informational requirements of a provision of this ordinance, the applicant may make specific reference to a portion of the permit application or permit condition under state law or regulation in satisfaction of the ordinance.

(14) A closure and closure care plan for the landfill as required by 401 KAR 48:090 Section 13 "Closure and Closure Care Requirements" with estimates of closure and closure care costs. The applicant shall demonstrate financial responsibility for closure and closure care by filing with the Hopkins County Judge/Executive a copy of the bond filed with the cabinet or establishing an escrow account in an amount equal to the anticipated costs of undertaking closure and closure care. To the extent that the bond filed with the cabinet does not provide financial responsibility for closure care, a separate bond or other surety or escrow account for closure care shall be filed with the Hopkins County Fiscal Court.

(C) An application for a certificate of site approval shall be submitted and served in the manner provided in this subsection.

(1) The application for a certificate of site approval shall be submitted to the Hopkins County Fiscal Court by filing with the office of the County Judge/Executive. Within thirty working (30) days of the

receipt of the petition for site approval, the applicant shall be notified in writing whether the application is administratively complete. Additional information may be required during technical review of the application notwithstanding a determination that application is administratively complete. If the application is deemed to be incomplete, a notice of deficiency identifying the information needed to make the application administratively complete shall be issued.

(2) Upon receipt of the notification from the office of the County Judge/Executive that the application is administratively complete, the person proposing to construct a solid waste management facility shall at its expense serve a complete copy of the application for a certificate of site approval to the following persons:

(a) each member of the Hopkins County Fiscal Court;

(b) The fire and police departments with jurisdiction over the site or facility and all such departments that respond to calls within Hopkins County;

(c) The County Disaster and Emergency Services Coordinator (DES);

(d) Directors of the following Hopkins County Agencies and Departments: Health Department; Joint Planning Commission; Department of Economic Development; Department of Tourism; Office of the Hopkins County Attorney, County Department of Parks and Recreation;

(e) The Kentucky Department of Fish and Wildlife Resources.

(D) Each petition for site approval shall be subject to a thirty (30) day public comment period and, upon request, a public meeting. After the applicant for a certificate of site approval has been notified that the application is administratively complete, the applicant shall cause to be published a public notice weekly for four (4) consecutive weeks in the two (2) newspapers of greatest circulation in Hopkins County. The notice shall be in a form approved by the Office of the Hopkins County Judge/Executive and shall advise the public that an application for a certificate of site approval has been filed and deemed administratively complete; and announcing the beginning of a comment period to run thirty days after the fourth publication of the notice, and the date of the public meeting, which shall be scheduled for thirty (30) days after the last date of publication but will be cancelled unless a written request for the meeting is received within fourteen (14) days after the last public notice has been published. The public meeting will be held in Hopkins County in the evening in order to accommodate the public.

#### SECTION 4: FISCAL COURT REVIEW

(A) Within sixty (60) days after the end of the public comment period or conclusion of the public meeting, all agencies of Hopkins County shall provide any comments and recommendations to the Fiscal Court regarding the granting, denial, or conditions on the issuance of a certificate of site approval. Within ninety (90) days following the end of the comment period or any public meeting, the Hopkins County

Fiscal Court shall make the final determination to grant, grant with conditions, or deny the request for a certificate of site approval.

(B) Fiscal Court determination shall be based on a consideration of the application, including the Facility Impact Report and other information submitted by applicant, and the findings and recommendations of any independent consultant retained by the Fiscal Court, the information and comments submitted by the public, and those matters of which the Court may take administrative and official notice. The applicant shall affirmatively demonstrate, and the Fiscal Court must find in determining to issue, or condition the requested certificate:

(1) That the proposed solid waste management activity will not present an unreasonable risk to human health or safety; and

(2) That the solid waste activity conducted at the proposed site will not adversely affect the ability to provide fire, health or other emergency services to the public both in the vicinity of the site and throughout Hopkins County; and

(3) That the solid waste activity, if conducted at the proposed site, will not result in adverse effect on the public's use and enjoyment of parks, public waters, historic structures, cultural and natural resources located in the vicinity of the facility site; and

(4) That the solid waste activity, if conducted at the proposed site, will not have a significant adverse impact on the establishment or continuation of businesses, residential developments, churches, schools or other types of activities related to the social, economic and cultural development of Hopkins County; and

(5) That the compliance and performance history of the person proposing to construct a solid waste management facility indicates a satisfactory record of compliance with applicable federal, state and local laws and regulations, and based upon such prior record, that it can be reasonably expected that the person proposing to construct a solid waste management facility will, in constructing, expanding, maintaining or operating the facility at the proposed site, maintain a corresponding satisfactory record of compliance with applicable laws and regulations; and

(6) That the person proposing to construct a solid waste management facility has demonstrated that it possesses 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 and post-closure maintenance of the facility; and

(7) That the person proposing to construct a solid waste management facility has demonstrated that it has or will comply with all applicable solid waste management laws and regulations concerning solid waste facility permits, filings and/or notifications required by the cabinet for the construction and operation of the facility site; and

(8) That the proposed solid waste management activity site is consistent with the goals and objectives of the Hopkins County Solid Waste Management Plan as adopted; and

(9) That the required financial responsibility for closure and closure care has been demonstrated by posting appropriate bond as provided in Section 3(B)(14).

(C) Notification.

The Hopkins County Fiscal Court shall send written notification of its determination with respect to the petition for site approval to the person proposing to construct and operate a solid waste management facility and to all persons who submitted written or oral comments during the public comment period. Such notifications shall include a copy of the written findings of fact and conclusions of law and a written response to comments received during the comment period.

(D) Coordination with Other Laws.

The Hopkins 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 5: FACILITY IMPACT REPORT

(A) Procedure.

The person proposing to construct a solid waste management facility shall include with the petition for site approval a facility impact report which shall

(a) describe the historic land use of the facility site;

(b) describe the land uses within 1 mile of the facility and ½ mile of the transportation routes from the proposed facility to the nearest primary roadway;

(c) identify on a map all schools, churches, public parks, agricultural land, nursing homes, hospitals, cemeteries, historic structures, and infant care facilities within 1 mile of the facility and of the transportation routes from the proposed facility to the nearest primary roadway;

(d) identify all roadways that will be used for haulage and access to the site;

(e) include an analysis conducted by a qualified appraiser, of the impact of the facility location and operation on land values within 1 mile of the facility site;

(f) describe existing environmental conditions in the vicinity of the facility site, such description to include at a minimum:

(i) The geology of the proposed facility site including the soil types to include soil permeability, stability and drainage, and the geology down through and including the aquifer zones in the area;

(ii) 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 wetlands;

(iii) Proximity to public and private surface or groundwater supplies, including current and potential future uses, and the potential for contamination, diminution or other impact on those supplies;

(iv) Identification of state or federally listed significant, threatened or endangered species;

(g) An evaluation of the potential for emission of gases and odors and measures to be taken to mitigate such impacts and to prevent nuisance conditions;

(h) identification of any areas within the facility site that are located in the flood plain;

(i) A cultural and archeological resources survey with a description of historic, archaeological and natural sites and landmarks, outstanding resource waters, public forest areas, dedicated or designated open space, public recreational areas, wildlife refuges, game lands and fishing waters within 1 mile of the site boundary;

(j) A description of the transportation routes, schedule, frequency of deliveries, and the characteristics of structures and population, residential and nonresidential, within the transportation corridors that will be utilized by the facility;

(k) Nature, extent, quantity and impacts of anticipated discharge or releases to air, water and land from all sources at the facility site, including storm water run off, and the human health and environmental consequences of such releases;

(l) Adequacy of emergency services (police, fire, medical) to protect human health, safety and environment from any fire, explosion, chemical release or other accidents at the facility, including any proposed on-site emergency response capability;

#### SECTION 6: FEES

The person proposing to construct a solid waste management facility shall be certified by check made payable to the Hopkins County Fiscal Court, submit fees in accordance with the following schedule:

(a) At the time of submission of the petition for site approval an initial fee of \$10,000 is required. This requirement applies to any application for a site approval certificate for a new facility and also to any petition for approval of an expansion to an existing facility.

(b) At the conclusion of the review process, the Hopkins County Judge/Executive shall tender to the person proposing to construct a solid waste management facility a statement of actual costs incurred by



the Hopkins County Fiscal Court in review of the application, including the costs of review of the application by the Court's consultant; and any balance due shall be payable upon receipt and balance remaining shall be remitted to the applicant.

(c) The total fee shall not exceed the actual costs to the Fiscal Court of the consultant's evaluation and any other expenses incurred.

The Fiscal Court shall utilize a qualified consultant to assist it in evaluation of the request for certificate of site approval, including review of the Facility Impact Report and all other information considered as a part of the review process.

#### SECTION 7: PENALTY CLAUSE

Any person who violates any provision of this ordinance shall be subject to a civil penalty of \$1,000.00 for each violation of this ordinance. Each day of violation shall constitute a separate offense.

#### SECTION 8: SEVERABILITY

The provisions of this ordinance are severable, and if any provision, section, paragraph, phrase, sentence or clause or the application thereof is held by a court of competent jurisdiction to be invalid, such invalidity shall not affect the remainder of the ordinance.

#### SECTION 9: EFFECTIVE DATE

This ordinance shall take effect and may be enforced upon its passage and publication.

This Ordinance shall become effective following publication on August 24, 2005.

Upon motion of Magistrate Rogers and seconded by Magistrate Riggs, the ordinance, as first read on the 1st day of August, 2005, was approved. Whereupon the vote was called, and on roll call, the Ordinance was adopted.

Magistrate Karol Welch	<u>YES</u>
Magistrate Coletta Wheeler	<u>YES</u>
Magistrate Tim Riggs	<u>ABSTAIN</u>
Magistrate Larry Wilson	<u>YES</u>
Magistrate Larry Rogers	<u>YES</u>
Magistrate Mike Duncan	<u>YES</u>
Magistrate Jon Garrett	<u>YES</u>
Judge Patricia Hawkins	<u>YES</u>

Upon second reading of the Ordinance, it was moved by Magistrate Garrett and seconded by Magistrate Riggs that

the Ordinance be duly adopted. Whereupon the vote was called, and on roll call, the vote stood:

Magistrate Karol Welch	<u>YES</u>
Magistrate Coletta Wheeler	<u>YES</u>

Magistrate Tim Riggs YES  
Magistrate Larry Wilson YES  
Magistrate Larry Rogers YES  
Magistrate Mike Duncan YES  
Magistrate Jon Garrett YES

Whereupon, Hopkins County Judge/Executive Patricia Hawkins declared this ordinance adopted on its second reading, affixing her signature and the date thereto, and declared that the same be recorded.

Patricia Hawkins  
Patricia Hawkins  
Hopkins County Judge/Executive

Attest:

Devra Steckler  
Devra Steckler  
Hopkins County Clerk