

ARTICLE 10-100: THE LICENSING OF CONSTRUCTION AND DEMOLITION DEBRIS LANDFILLS WITHIN THE TOWN OF BUSTI.

Section 10-101. Legislative Intent

This local law, entitled "Construction and Demolition Landfills," and known hereafter as Article 10 of the Town of Busti Code, is enacted in recognition of the fact that the creation and/or operation of construction and demolition debris landfills can constitute both a public and a private nuisance. Such landfills, if improperly sited or improperly operated, may cause significant harm to the air, water and soil quality not only of the environment immediately adjacent to the landfill site, but also throughout the Town. These landfills may alter or impair the aesthetic qualities of the Town and render other properties less valuable due to their physical proximity to the landfill. The intent of this local law is to establish a legal procedure whereby such landfill activities may be properly licensed by the Town and that thereafter the landfill operations be regulated in such a fashion as to guarantee the health and welfare of the Town and its residents.

Section 10-102. Definitions

(a) Construction and demolition debris landfill: A site at which construction and demolition debris are disposed of, stored or interned.

(b) Construction and demolition debris: Uncontaminated solid waste resulting from the construction, remodeling, repair and demolition of structures and roads; and uncontaminated solid waste consisting of vegetation resulting from land clearing and grubbing, utility line maintenance and seasonal and storm related cleanup. Such waste includes, but is not limited to, bricks, concrete and other masonry material, soil, rock, wood, wall covering, plaster, drywall, plumbing fixtures, non-asbestos insulation, roofing shingles, asphaltic pavement, glass, plastics that are not sealed in a manner that conceals other wastes, electrical wiring and components containing no hazardous liquids, and metals that are incidental to any of the above. Solid waste that is not construction and demolition debris (even if resulting from the construction, remodeling, repair and demolition of structures and roads and land clearing) includes, but is not limited to asbestos waste, garbage, corrugated container board, electrical fixtures containing hazardous liquids such as fluorescent light ballasts or transformer, carpeting, furniture, appliances, tires, drums and containers, and fuel tanks. Specifically excluded from the definition of construction and demolition debris is solid waste (including what otherwise would be construction debris) resulting from any processing technique, other than that employed at a construction and demolition processing facility, that renders individual waste components unrecognizable, such as pulverizing or shredding.

(c) Person: Any individual person or persons, firm, partnership corporation, whether business, membership, religious, charitable or otherwise; any association or other unit or entity owning, leasing or occupying real property in the Town of Busti.

(d) Reservoir: Any natural or artificial lake or pond which is tributary to or serves as a source of potable water for the Town of Busti water supply or for any individual within the Town of Busti.

(e) Water Supply: Any private or public water supply of potable water to any person, or group of persons within the Town of Busti.

(f) Water Course: Any spring, stream, marsh or channel of water of any kind within the Town of Busti.

(g) Watershed: Any drainage area contributing water to the Town of Busti water supply or to the private water supply of any individual or group of individuals within the Town of Busti.

Section 10-103. Incorporation of State Regulations

This local law hereby incorporates, by reference, as if fully set forth herein all of the current provisions of 6 NYCRR (New York Code of Rules and Regulations), 360-7, as amended, and as may be amended in the future. Said provisions thus incorporated herein shall control any application or operation hereunder, except as this local law may set forth more restrictive provisions relating to the application for any landfill operation or for its operation thereafter.

Section 10-104. Lead Agency Status

The Town of Busti hereby designates the Planning Board as the lead agency in the preparation and/or consideration of any environmental assessment form or any environmental assessment report to be prepared as a consequence of any application made pursuant to this local law.

Section 10-105. Requirements for Operation and Maintenance of a Construction and Demolitions Debris Landfill

No person shall operate, establish or maintain a construction and demolition debris landfill in the Town of Busti until:

(a) That person has obtained a license to operate said landfill operation from the Town of Busti and

(b) That person has obtained a construction and demolition debris landfill permit from the New York State Department of Environmental Conservation.

Section 10-106. Application for Licenses for a Construction and Demolition Debris Landfill

Application for the license of a construction and demolition debris landfill shall be made in writing in the form required by 6 NYCRR 360-7 and as supplemented by this local law to the Town Board of the Town of Busti and to the New York Department of Environmental Conservation.

Section 10-107. Supplemental Permit Applications for Town of Busti Construction and Demolition Debris Landfill

1. Any application for construction and/or operation of the construction and demolition debris landfill within the Town of Busti shall adhere to all of the requirements of 6 NYCRR 360-7, relating to a landfill proposal of five (5) or more acres in area. Said requirements shall be complied with by the applicant regardless of the size of the proposed landfill site within the Town of Busti. Any application hereunder shall therefore meet all of the requirements and provide all of the relevant information as specified in the aforementioned part 360-7, without regard to the proposed area of the site.
2. All engineering and hydrologists plans, tests or reports shall be stamped and certified by an engineer or hydrologist licensed in the State of New York.
3. The Hydrologist's report as set forth at 6 NYCRR 360-7.6 shall also include testing reports on all existing reservoirs, water supplies, water courses, and watersheds within one (1) lineal mile of the proposed landfill site for the purpose of determining background water quality of such water resources adjacent to the landfill site. The results of these tests shall be incorporated as part of the application and shall be made by the applicant or by the Town at the Town's direction.
4. Thereafter should a license be granted and the Town Board thereafter decides there is a need for additional water testing exist, the Town shall require the applicant/licensee to conduct such further testing or the Town may conduct such further testing itself to the extent the Town deems necessary and appropriate.
5. All testing and engineering expenses shall be paid by the applicant or applicant/licensee. The applicant shall also pay expenses incurred by the Town of Busti for engineers, hydrologists, and any attorneys engaged by the Town to review the engineering and testing of the applicant or applicant/licensee.

Section 10-108. Public Hearing, Notice

After submission of the complete written application by the applicant, a bearing on said application shall be held by the Town Board not less than two (2) nor more than six (6) weeks from the date of receipt of the application. Notice of the hearing shall be given to the applicant by mail, postage prepaid, to the address given in the application and shall be published once in the official newspaper of the Town not less than ten (10) days before the date of the bearing.

Section 10-109. Matters for Consideration at the Public Hearing

At the time and place set for the hearing, the Town Board of the Town of Busti shall hear the applicant and all other persons wishing to be heard on the application for a license to construct and operate a construction and demolition debris landfill. In considering such application, the Town Board shall take into account the following:

- (a) The suitability of the applicant with reference to his ability to comply with the requirements of the New York State Department of Environmental Conservation permit and such other reasonable regulations concerning tile proposed construction and demolition debris landfills;

- (b) The financial ability of the applicant to comply with environmental regulations;
- (c) The clean, wholesome and attractive environment which has been declared to be of vital importance to the continued welfare of its residents by considering whether or not the proposed location of the landfill can be reasonably protected or shielded so as to prevent any unfavorable affect on adjacent properties or on the Town in general;
- (d) The type of road servicing the landfill or the roadway from which the landfill may be seen;
- (e) The natural or artificial barriers protecting the landfill from view;
- (f) The proximity of the proposed landfill to established residential, recreational or farm areas;
- (g) The availability of highway access routes to the proposed site;
- (h) The impact of any increase in traffic or traffic congestion caused by the landfill operations;
- (i) The availability of other suitable sites for landfills which may exist within the Town or the adjacent areas outside of the Town;
- (j) The potential for degradation to reservoirs, water supplies, water courses and watersheds;
- (k) The impact of the landfill on future growth and development;
- (l) The impact of the landfill on wildlife;
- (m) The availability of alternate disposal methods and other such landfills;
- (n) The general impact of the landfill on environment.

Section 10-110. The Grant or Denial of Application

The Town Board shall, within thirty (30) days of such hearing, or continuance thereof, make a finding as to whether or not the application shall be granted, giving notice of its findings to the applicant by mail, postage prepaid, to the address given on the application. If approved, the license shall be forth with issued to remain in effect until the following January 1. Approval shall be personal to the applicant and is not assignable. Licenses shall be renewed hereafter upon payment of the annual license fees, without hearing, provided all provision of this local law are compiled with, as well as all provisions of any permit issued by New York State Department of Environmental

Conservation during the respective license or permit periods.

Section 10-111. License Fee

- (a) Initial License Fee - At the time of the initial application, a non-refundable fee of Ten Thousand Dollars (\$10,000.00) shall be paid by the applicant to the Town of Busti.

(b) The applicant shall also be obligated to pay for any testing in regard to any environmental impact statement which may be required during the application process, as well as any related charges of the application process, whether required by the Department of Environmental Conservation or the Town of Busti. The Town shall impose such charges or expenses as may be allowed by law for its consideration of the application. Such fees shall be paid in advance of charges being incurred by the Town of Busti.

(c) Operating fee - The licensee, after granting of a license, shall pay to the Town on April 15, July 15, September 15, and June 15, license fee of \$5.00 per cubic yard of debris deposited at the landfill site. A licensed certified public accountant shall certify that the amount so paid is the true and correct amount required to be paid during the prior quarter. The operator will make its books of operation and receipt available to the Town for its inspection to confirm the operators proper payment of the license fee herein.

Section 10-112. Performance Guarantees and Insurance

(a) The licensee shall obtain and provide to the Town a performance bond, guaranteeing its lawful performance of all of the terms and conditions of its permit with the New York State Department of Environmental Conservation and its license with the Town of Busti in an amount of Five Million Dollars (\$5,000,000.00).

(b) The licensee shall procure and maintain during the course of its operations, including but not limited to its current operating periods but also during any periods of monitoring and closure which may be provided for by its permit with the New York State Department of Environmental Conservation or its license with the Town of Busti liability insurance in an amount not less than Five Million Dollars (\$5,000,000.00), general liability coverage. The insurance procured herein shall include an environmental rider guaranteeing site cleanup and coverage for environmental damages and the Town of Busti shall be named on the policy as a co-insured. The insurance required herein shall continue in full force and effect during the period of landfill closure that may be prescribed by the applicable sections of the Environmental Conservation Law, the New York Code of Rules and Regulations, U.S. EPA Rules or Regulations, and/or the period of closure monitoring, testing and reporting required by the Town of Busti.

Section 10-113. Penalties for Offenses

Any person violating any of the provisions of this local law shall be punished upon conviction by a fine of not less than Five Hundred Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00) for each violation. Each day that a violation of or a failure to comply with any of the provisions of this local law or any regulation promulgated by the Department of Environmental Conservation regarding its landfill permit, or the Town Board of the Town of Busti regarding its landfill license shall constitute a separate and distinct Violation.

Section 10-114. Permitted Locations

Construction and demolition landfills may be constructed only in that portion of the CAMP District as defined by the Town of Busti Zoning Code.

Section 10-115. Conflicts

In their interpretation and application, the provisions of this local law shall be held to be minimum requirements adopted for the promotion of the public health, safety of the general welfare of the Town of Busti and its residents. Whenever the requirements of this local law are at variance with other requirements, of any Town Law or ordinance or the requirements of any other lawfully adopted rules, regulations or ordinances, the most restrictive or that imposing the higher standards shall govern.

Section 10-116. Separability

The invalidity of any provision of this local law shall not invalidate any other part thereof.

Section 10-117. Effective Date

This local law shall take effect immediately

Adopted on June 24, 1991.