

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

~~County~~

~~City~~

Town

~~XXXXX~~

of MACHIAS

Local Law No. 1 of the year 1991

A local law KNOWN AS THE "SOLID WASTE DISPOSAL LAW OF THE TOWN OF MACHIAS"
(Insert Title)

Be it enacted by the TOWN BOARD of the
(Name of Legislative Body)

~~XXXXX~~

~~XX~~

Town

~~XXXXX~~

of MACHIAS as follows:

(SEE ATTACHED SHEETS)

I. TITLE

This Local Law shall be known as the "Solid Waste Disposal Law of the Town of Machias."

II. INTRODUCTORY MATTERS

A. Findings of the Town Board

The Town Board finds that environmental science is presently inadequate to satisfactorily evaluate and control pollution from solid waste disposal facilities such as landfills; ash fills; resource recovery or incinerator facilities. Among other factors, the Board finds as follows:

1. The inability of geological science to precisely ascertain the existence and flow of ground waters and to map subterranean geology makes it impossible to determine the extent to which solid waste disposal may, or may not be, contaminating water supplies.

2. Moreover, the accumulated extent of hazardous waste disposal in solid waste disposal facilities cannot be measured or accurately determined because of state and federal regulations permitting disposal of residential or small user quantities of hazardous wastes.

3. The Town's needs for solid waste disposal are being met by the Cattaraugus County Department of Public Works and private firms.

4. Future correction of pollution from sanitary landfills may be very expensive or impossible to achieve. Ground water pollution threatens the health and livelihood of Town residents who rely exclusively on ground water for human consumption and agricultural purposes.

5. The Town's existing community character will be adversely and unalterably impacted by the location and operation of any solid waste management facilities within the Town.

6. Substantial scientific opinion questions the environmental and health effects of both "resource recovery" facilities that incinerate or burn solid waste and of the handling and disposal of ash residue from such facilities. Recent NYSDEC and Federal Environmental Protection Agency studies indicate that such ash often demonstrates the characteristics of hazardous waste by the leaving of heavy metals in toxic amounts.

7. Solid waste regulation under the New York Environmental Conservation Law (ELC) is inadequate to relieve the foregoing concerns.

B. Purpose of Local Law

The Town Board intends by this Local Law:

1. To prohibit the operation of solid waste management facilities within the Town in order to preserve and promote a clean, wholesome, and attractive environment for the community.

2. To protect the residents of the Town from the effects of solid waste disposal, including

/ a. unaesthetic results, including odors, blowing litter, increased traffic, dust, and noise, and

/ b. deterioration in property values associated with adjacent or proximate disposal operation that may interfere with the orderly development of properties; and

/ c. threats to public health or the environment by contamination of air, land, surface waters, or groundwaters.

3. To exercise the Town's police powers under the Municipal

Home Rule Law and Sections 130 and 136 of the Town Law for the physical and mental well-being and safety of its citizens and to prohibit solid waste disposal operations within the Town that might otherwise be permitted under the Environmental Conservation Law (ECL). Section 27-0711 of the ECL specifically recognizes and authorizes the right and authority of a town to legislate stricter controls on solid waste disposal operations than state law requires.

III. DEFINITIONS

The following definitions shall apply to the corresponding words:

A. 6 NYCCR - Title 6 of the New York Code, Rules and Regulations.

B. SOLID WASTE MANAGEMENT FACILITY - any facility employed beyond the initial solid waste collection process and managing solid waste including, but not limited to: storage areas or facilities; transfer stations; rail-haul or barge-haul facilities; processing facilities; landfills; ashfills; disposal facilities; solid waste incinerators; recycling facilities; and waste tire storage facilities.

X C. SOLID WASTE - all putrescible and non-putrescible materials or substances that are discarded or rejected as being spent, useless, worthless, or in excess to the owners at the time of such discard or rejection, including but not limited to garbage, refuse, industrial, commercial and household waste, sludges from air or water treatment facilities, rubbish, tires, ashes, contained gaseous material, incinerator residue and construction and demolition debris. In addition:

1. A material is "discarded" if it is abandoned by being:

- a. disposed of:
- b. burned or incinerated, including being burned as a fuel for the purpose of recovering useable energy; or
- b. accumulated, stored, or physically, chemically, or biologically treated (other than burned or incinerated) instead of or before being disposed of.

2. A material is "disposed of" if it is discharged, deposited, injected, dumped, spilled, leaked or placed into or on any land or water.

3. The following are not solid waste for the purposes of this local law:

- (i) domestic sewage;
- (ii) any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly owned treatment works for treatment, except for any material that is introduced into such system in order to avoid the provisions of this local law;
- (iii) industrial wastewater discharges that are actual point source discharges subject to permits under ECL Article 17;
- (iv) irrigation return flows;
- (v) radioactive materials which are source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended;
- (vi) wood chips used for mulch, landscaping or erosion control purposes.

D. INDUSTRIAL WASTE - any liquid, gaseous, solid, or waste substance or combination thereof resulting from any process of industry, manufacturing, trade, or business. It shall include but not be limited to, pesticides, lime, acids, chemicals, petroleum products, tar, and dye-stuffs.

E. COMMERCIAL WASTE - solid waste generated by stores, warehouses, restaurants, hospital, medical and dental facilities.

F. HOUSEHOLD WASTE - solid waste from residential sources.

G. CONSTRUCTION AND DEMOLITION DEBRIS - uncontaminated, inert solid waste resulting from the construction, remodeling, repair and demolition of structures, and from road building and land clearing. Such waste includes, but is not limited to, bricks, concrete and other masonry materials, soil, rock, wood, wall coverings, plaster, drywall, plumbing fixtures, non-asbestos insulation, roofing shingles, asphaltic pavement, glass, plastics that are not sealed in a manner that conceals other wastes, and metals that are incidental to any of the above.

H. LANDFILL, or SANITARY LANDFILL - any disposal area for solid wastes in or upon the ground.

I. ASHFILL - any landfill designed to accept ash, ash residue bottom ash, combined ash, or fly ash.

J. ASH RESIDUE - all the solid residue and any entrained liquids resulting from the combustion of solid waste at a solid waste incinerator, including bottom ash, boiler ash, fly ash, and the solid waste residue of any air pollution control device used at a solid waste incinerator.

K. BOTTOM ASH - the ash residue remaining after combustion of solid waste in a solid waste incinerator that is discharged through and from the grates or stoker.

L. COMBINED ASH - the mixture of bottom ash and fly ash.

M. FLY ASH - the ash residue from the combustion of solid waste that is entrained in the gas stream of the solid waste incinerator, which includes, but is not limited to, particulates, boiler ash, cinders, soot, and solid waste from air pollution control equipment.

N. PERSON - any individual, partnership, firm, association, business, industry, enterprise, public or private corporation, political subdivision of the state, government agency, municipality, estate, trust, or any other legal entity whatsoever.

O. RECYCLING - means the reuse of solid waste recovered from the solid waste stream into goods or materials suitable for reuse in original or changed form.

IV. EXEMPTIONS

The following are not subject to this Local Law;

A. Any disposal of manure in normal farming operations,

B. Any operation or facility which receives or collects only non-putrescible, nonhazardous solid waste and beneficially uses or reuses or legitimately recycles or reclaims such waste. Such exempt facilities would include citizen recycling programs, municipal recycling programs, municipal recycling operations, and bona-fide salvage dealers.

None of the above exemptions shall be construed to permit any activity contrary to existing building codes or other laws or as exempting persons engaging in any such activities from obtaining any other permits required by state or local law.

V. PROHIBITED ACTIVITY

A. No solid waste management facility (landfill, ashfill, solid waste incinerator, etc.) shall be permitted to commence operation or to continue operation within the Town.

B. Waivers from these prohibitions may be granted by the Town Board in its discretion, and on such conditions as it may reasonably establish, only for facilities located on an applicant's premises and serving only the applicant's waste products generated within the Town. Persons who believe they qualify for such a waiver shall apply to the Town Board and provide such information, proof of financial security, and other such documents as the Town Board may reasonably require. No person who qualifies for and receives this waiver shall accept, handle, import, transport, or handle any waste created or generated by any other party or from any location outside of the Town. In addition, such person shall be liable for all damages and claims that may result from disposal of any solid or liquid waste on his or her premises.

VI. ENFORCEMENT

A. Upon a violation of this Local Law by any person, the Town Board shall be entitled to obtain an injunction against such persons prohibiting further violations and, in addition, ordering that any

solid or liquid waste disposed of in violation of hereof be removed from the Town, ordering that any land on which solid waste is disposed of in violation of this Local Law be restored as nearly as possible to its former condition by the removal of any waste illegally disposed of and by such other restorative measures as are available, and further ordering that the operator remedy any effects of the violation on surrounding or adjacent properties or resources, including, without limitation, air crops, water bodies, wetlands, and groundwaters.

B. For any violation of this Local Law the violator shall be subject to a civil penalty of up to \$25,000 for each violation. Each day of non-compliance shall be a separate and distinct violation. The Town shall be entitled to recover such fines in an action at law in any court of competent jurisdiction.

C. Upon an action for injunctive relief or for a civil penalty hereunder, the Town shall be entitled to a further award and judgment for its costs, expenses, disbursements, and reasonable attorneys' fees in connection therewith.

D. If any person who obtained a waiver pursuant to Section V. C. violates any term or condition of the waiver then the Town, in addition to A, B, and C above, shall also be entitled to revoke the waiver.

VII. MISCELLANEOUS

A. This Local Law shall be deemed to supersede and repeal any other ordinance and local laws to the extent inconsistent therewith.

B. If any part of this Local Law shall be judicially declared to be invalid, void, unconstitutional, or unenforceable, all unaffected provisions hereof shall survive such declaration, and this Local Law shall remain in full force and effect as if the invalidated portions had not been enacted.

C. Nothing herein shall be deemed to be a waiver of or restriction upon any rights and powers available to the Town to further regulate the subject matter of this Local Law.

VIII. EFFECTIVE DATE

This Local Law shall become effective when it is filed with the Secretary of State pursuant to the Municipal Home Rule Law.

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)

I hereby certify that the local law annexed hereto, designated as local law No. 1 of 1991 of the ~~(County)(City)~~(Town)(Village) of MACHIAS was duly passed by the TOWN BOARD on August 26 1991, in accordance with the applicable provisions of law.
(Name of Legislative Body)

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 19____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 19____, and was (approved)(not disapproved)(repassed after disapproval) by the _____ and was deemed duly adopted on _____ 19____, in accordance with the applicable provisions of law.
(Name of Legislative Body) (Elective Chief Executive Officer*)

3. (Final adoption by referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 19____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 19____, and was (approved)(not disapproved)(repassed after disapproval) by the _____ on _____ 19____. Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____ 19____, in accordance with the applicable provisions of law.
(Name of Legislative Body) (Elective Chief Executive Officer*)

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 19____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 19____, and was (approved)(not disapproved)(repassed after disapproval) by the _____ on _____ 19____. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 19____, in accordance with the applicable provisions of law.
(Name of Legislative Body) (Elective Chief Executive Officer*)

*Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairman of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 19____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 19____, became operative.

6. (County local law concerning adoption of Charter.)

I hereby certify that the local law annexed hereto, designated as local law No. _____ of 19____ of the County of _____ State of New York, having been submitted to the electors at the General Election of November _____ 19____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and of a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)

I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 1, above.

Clerk of the County legislative body, City, Town or Village Clerk
or officer designated by local legislative body

Town Clerk

Date: August 26, 1991

(Seal)

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized Attorney of locality.)

STATE OF NEW YORK
COUNTY OF CATTARAUGUS

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Signature

TOWN ATTORNEY

Title

~~XXXXX~~

~~XX~~

Town

of

MACHIAS

~~XXXXX~~

Date: August 28, 1991