

84238

P. 1200-1204

AN ORDINANCE 89-1

RELATING TO THE ENVIRONMENT; ENACTING THE SOLID WASTE ORDINANCE; IMPOSING FEES; PROVIDING PENALTIES.

BE IT ENACTED BY THE COUNTY COMMISSION OF TORRANCE COUNTY, STATE OF NEW MEXICO:

1. SHORT TITLE.--This ordinance may be cited as the "Solid Waste Ordinance".

2. PURPOSES.--The purpose of the Solid Waste Ordinance is to help ensure that the county maintain its environment to provide for the health, safety, comfort and social well being of its inhabitants and to ensure the proper utilization of its lands.

3. DEFINITIONS.--

A. disposal- means the deposit of any solid waste or constituent thereof so that the solid waste or constituent thereof may enter the environment or be emitted into the air or discharged into any water, including ground water;

B. operate- means all necessary activities, including replacement of equipment or appurtenances, to assure the dependable and economic function of a solid waste facility in accordance with its intended purpose;

C. person- means any individual, trust, firm, joint stock company, federal agency, corporation including a government corporation, partnership, association, state, municipality, commission, political subdivision of a state or any interstate body;

D. release- means any spilling, leaking, emitting, discharging, escaping, leaching or disposing of solid waste from a solid waste facility;

E. responsible party- means an owner, operator or lessee of a solid waste facility.

F. solid waste- means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility and other discarded material including solid, liquid, semisolid or contained gaseous material resulting from industrial, commercial and mining operations and from community activities, but the term does not include:

1. solid or dissolved material in domestic sewage, solid or dissolved materials in irrigation return flows, industrial discharges which are point sources subject to permits under Section 402 of the federal Water Pollution Control Act, as amended (86 Stat. 880) or source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923);

2. those wastes, the disposal of which or the discharges from which are in accordance with the following federal or state laws and regulations adopted under those laws:

a. the state Water Quality Act;

b. the state Air Quality Control Act, except for Asbestos;

Asbestos shall be considered a solid waste as defined in this ordinance;

c. the state Hazardous Waste Act;

d. the state Radiation Protection Act;

- e. the state Oil and Gas Act;
 - f. the federal Surface Mining Control and Reclamation Act; or
 - h. the federal Clean Water Act;
3. agricultural waste, including manures and crop residues, returned to the soil as fertilizer or soil conditioner; or
 4. overburden and tailings resulting from mining and milling operations;

G. Solid Waste Facility- means any public or private system, facility, land, improvements on the land, structures or other appurtenances or methods used for processing, recycling or disposing of solid waste including landfills, transfer stations, resource recovery facilities, incinerators and other similar facilities not specified, but shall not include equipment approved by the Environmental Improvement Board for use by a provider of medical services to render medical waste non-infectious;

H. Storage- means the containment, or attempted containment, of solid waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such solid waste;

I. Transporter- means a person engaged in the movement, not including movement at the site of generation, disposal, treatment or storage, of solid waste;

4. FEES--ASSESSMENTS--IMPOSITION.--

A. There is created the "solid waste assessment fee", and it shall be levied and imposed upon disposal of solid waste at any solid waste facility in Torrance County.

B. The fee shall be charged and collected at each solid waste facility as follows:

1. .25¢ per cubic yard of solid waste which is generated within the county in which the solid waste facility is located; and
2. \$2.00 per cubic yard of solid waste which is generated outside the county in which the solid waste facility is located.

C. The fees imposed by this section shall be paid by the person disposing of the solid waste at a solid waste facility and shall be collected by the operator of the solid waste facility and remitted to the Treasurer of Torrance County. The fees accrue at the time the solid waste is disposed of in this county. The fees imposed by this section shall be due and payable to the Treasurer of Torrance County by the operator of the solid waste facility on or before the fifteenth day of the month after the month in which the fees accrued together with a return on such form or forms as prescribed by the Treasurer. Each person disposing of solid waste at a solid waste facility and each person required to collect the fees imposed by this section shall keep complete and accurate records in a form prescribed by the Treasurer.

D. The fees collected pursuant to this section shall be deposited in the general fund of Torrance County.

E. No fee shall be charged for disposal of solid waste at solid waste facilities entirely under the control of an incorporated municipality if that municipality charges fees for the disposal of waste at that facility.

5. ENTRY--AVAILABILITY OF RECORDS.--

For purposes of conducting any study, taking any corrective action or enforcing the provisions of the Solid Waste Ordinance, upon request

of the County Commission or the Commission's authorized representative any person who collects, stores, transports or disposes of solid waste shall furnish information relating to such solid wastes and permit the Commission or the Commission's authorized representative to:

- A. enter at reasonable times any establishment, vehicle or other place maintained by any person where solid wastes are or have been stored, transported or disposed of;
- B. inspect and obtain samples of any solid wastes or surrounding soils, air, surface water or ground water; and
- C. conduct monitoring or testing of surrounding soils, air, surface water and ground water.

6. GENERAL REQUIREMENTS--

Operators shall comply with all requirements of the Solid Waste Management Regulations, as currently in force and as made at any time in the future by the Environmental Improvement Board of the State of New Mexico.

7. FINANCIAL RESPONSIBILITY--AMOUNT AND METHOD OF FINANCIAL RESPONSIBILITY --SURETY REQUIREMENTS--PERIOD OF LIABILITY.--

The operator or owner of a solid waste facility shall submit to the County Commission proof of the operator's or owner's financial capability to provide reasonable and necessary response during the operating life of the facility and for twenty-five years after closure and to provide for the closure of the facility and post-closure care required under this ordinance, or any regulation of the Environmental Improvement Board. This requirement shall be a condition of obtaining and retaining a permit to operate a solid waste facility.

8. PERMITS REQUIRED--FEES.--

No person shall operate any new facility without a permit issued by County Commission. "New" means any facility that was not in operation on the effective date of this ordinance and any expansion of operations in any facility existing on the effective date of this ordinance. Operators of existing facilities that will continue to operate after the effective date of this ordinance may continue to operate provided they obtain a permit within 90 days of the effective date of this ordinance. Said permit may be obtained by filing an application at the Office of the County Clerk, upon a form approved by the County Commission. Such an application must show compliance with Environmental Improvement Board regulations, the location of the proposed or existing facility, and compliance with Section 7 of this ordinance. The application must be accompanied by a fee of \$500.00. Upon notification by the County Commission that the permit has been approved the applicant shall comply with the public notice requirements of the Solid Waste Management Regulations. Upon proof that the notice requirements have been complied with, the Permit shall be issued by the Commission.

9. PERMIT RENEWAL AND TERMINATION--

The permit required in section 8 shall terminate one year from the date of issuance, upon final closure of the facility, or upon termination of the operator's permit by Environmental Improvement Board. The permit may renewed by the payment of an annual renewal fee of \$500.00, 30 days before the anniversary date of the permit and upon proof of continued compliance with all requirements of this ordinance. Renewal may be denied for failure to comply with Environmental Improvement Board regulations, this ordinance, making any misrepresentation or omission of any relevant fact in an application, or for any reason enumerated in

Environmental Improvement Board regulations for denial of permit or as grounds for terminating a permit.

10. FEES-- to general fund.--

All fees collected pursuant to sections 8 and 9 above shall be deposited in the general fund of Torrance County.

11. COST RECOVERY--

An operator or owner shall be liable to the County for the costs incurred by the County in connection with a solid waste facility for the expenses of investigation, cleanup, closure and post-closure maintenance, care, operation and protection of the surrounding land, water and air and restoration of polluted soil and ground water due to releases from solid waste facilities. The County Commission shall take all necessary and appropriate legal action to recover the costs from the responsible party. The County Commission need not complete a corrective action in order to seek recovery of costs.

12. ENFORCEMENT--COMPLIANCE ORDERS.--

A. Whenever the County Commission determines that any person has violated or is in violation of any requirement of the Solid Waste Ordinance the Commission may issue an Order requiring compliance immediately or within a specified time period or commence an action in District Court for appropriate relief, including a temporary or permanent injunction.

B. Any order issued pursuant to this section may include a suspension or revocation of any permit issued by the Commission and shall state with reasonable specificity the nature of the violation.

C. Any order issued pursuant to this section, any other enforcement proceeding initiated or any claim for personal or property injury arising from any conduct for which evidence of financial responsibility must be provided may be issued to or taken against the insurer or guarantor of an owner or operator of a disposal facility if:

1. the owner or operator is in bankruptcy, reorganization or arrangement under the federal Bankruptcy Code; or

2. jurisdiction in any state or federal court cannot with reasonable diligence be obtained over an owner or operator likely to be insolvent at the time of judgment.

D. Any order issued pursuant to this section shall become final unless, no later than thirty days after the order is served, the person or persons named therein submit a written request to the Commission for a public hearing. Said hearing shall be had within 10 days and the decision of the Commission at said hearing shall be final. Proof of the filing of an appeal with a Court of Record, other than the Probate Court, shall operate to stay enforcement of the Commission's Order until said appeal has been resolved.

13. PENALTY--CRIMINAL.--

Any person who violates any provision of the Solid Waste Ordinance shall be guilty of a misdemeanor and shall upon conviction be punished by a fine of not more than \$300.00 or by imprisonment for a definite term of ninety days or both such fine and imprisonment.

14. PENALTY--CIVIL.--

Any person who violates any provision of the Solid Waste Ordinance, or any Order pursuant to section 12 of this ordinance may be assessed a civil penalty not to exceed \$500.00 for each day during any portion of which a violation occurs.

15. SEVERABILITY.--

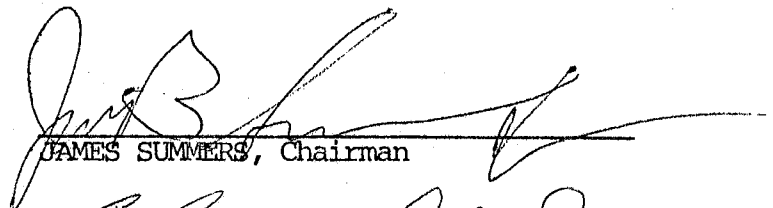
If any part or application of the Solid Waste Ordinance is held invalid, the remainder or its application to other situations or persons shall not be affected.

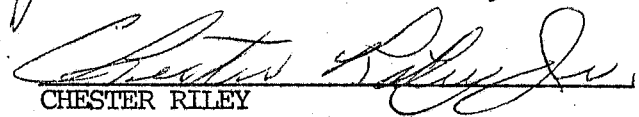
16. EFFECTIVE DATE.--

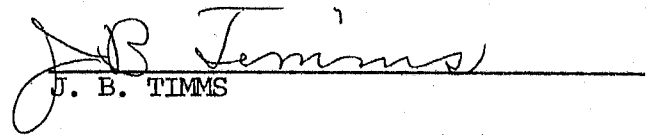
The effective date of the Solid Waste Ordinance shall be the 9th day of September, 1989.

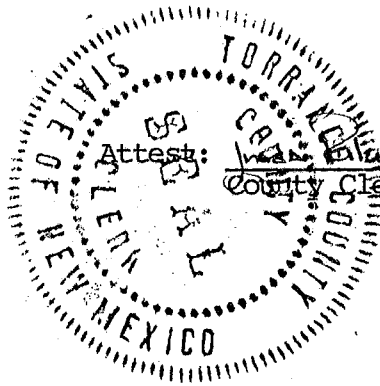
THIS ORDINANCE PASSED AND DULY ENACTED this 9th day of August, 1989.

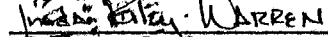
Torrance County Board of Commissioners:


JAMES SUMMERS, Chairman


CHESTER RILEY

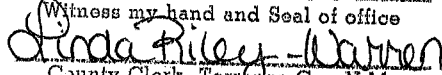
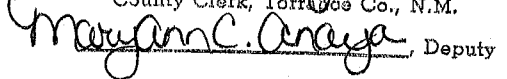

J. B. TIMMS



Attest: 
Linda Riley Warren
County Clerk

STATE OF NEW MEXICO
County of Torrance

I hereby certify that this instrument was filed for record on the 10th day of Sept. A.D., 19 89 at 12:02 o'clock P.M. and duly recorded in book 260 at page 1200-1204

Witness my hand and Seal of office

Linda Riley Warren
County Clerk, Torrance Co., N.M.

Morgan C. Araya, Deputy

