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County of Martin, Minnesota
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2005R-380321

Kay Wrucke, Martin County Recorder

By Nancy Kumbel Deputy

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PAGES: 11

**MARTIN COUNTY
RESOLUTION NO. R-#49/05**

WHEREAS, Martin County ("County") is a member of the Prairieland Solid Waste Board ("Prairieland"), which was established through a Joint Powers Agreement ("Agreement") with Faribault County; and

WHEREAS, Prairieland owns and operates the Prairieland Compost and Resource Recovery Facility ("Facility") in Truman, Minnesota that composts and otherwise recovers resources from solid waste generated by residences, businesses and institutions in the County and helps reduce reliance on landfills for management of solid waste pursuant to direction to the County under the Minnesota Waste Management Act (Minn. Stat. Chap. 115A); and

WHEREAS, the County has already adopted a Solid Waste Service Fee Ordinance pursuant to Minn. Stat. §400.08 that provides authority for implementation of a hauler-collected service fee that would be assessed based upon the amount of solid waste generated by each entity that has solid waste collection service; and

WHEREAS, implementation of a hauler-collected service fee to assist and enhance solid waste resource recovery has been recommended by the State of Minnesota and approved by the Minnesota Supreme Court in the case of *Zenith/Kremer v. Western Lake Sanitary*, 572 N.W. 2d 300 (Minn. 1997); and

WHEREAS, Prairieland has determined that action by the County to implement a hauler-collected service fee, in combination with a reduction in the Facility tipping fee offered to solid waste haulers for solid waste generated in the County, would be beneficial for the continued operation of the Facility and enhancement of resource recovery from solid waste generated in the County; and

WHEREAS, proceeds from the hauler-collected service fee would enhance the achievement of other goals in the County's Solid Waste Management Plan such as improve recycling of solid waste and household hazardous waste.

NOW, THEREFORE BE IT RESOLVED, that the County recommends to Prairieland a restructuring of the tipping fee at the Facility effective January 1, 2006 to include a reduced tipping fee offered to haulers for solid waste collected in the County; and

BE IT FURTHER RESOLVED, that the County hereby amends its Solid Waste Service Fee Ordinance pursuant to the attached Ordinance No. 12/05 to implement a hauler-collected service fee effective January 1, 2006, to assist and enhance resource recovery from solid waste generated in the County.

Dated this 20th day of September, 2005.

**MARTIN COUNTY BOARD OF
COMMISSIONERS**

By: Dan Schmidtke
The Honorable Dan Schmidtke
Its: Chair

ATTEST: Scott Higgins
Scott Higgins, County Coordinator



**MARTIN COUNTY
ORDINANCE NO. 12/05**

**AN ORDINANCE AMENDING THE MARTIN COUNTY SOLID WASTE
MANAGEMENT SERVICE FEE ORDINANCE**

The County Board of Martin does hereby ordain as follows:

Section 1. That the Martin County Solid Waste Service Fee Ordinance, adopted in November 1990, and amended in January 1999, shall be amended by deleting the current ordinance and restating it as follows:

**MARTIN COUNTY
SOLID WASTE MANAGEMENT
SERVICE FEE ORDINANCE**

SECTION I: PURPOSE AND AUTHORITY

This ordinance is enacted pursuant to Minn. Stat. §400.08, which grants Martin County the authority to impose reasonable charges for solid waste management services provided by the County or by others under contract with the County. The purpose of this ordinance is to establish methods of collection of such charges to fund such solid waste management services, which are intended to protect the public health and welfare and the environment pursuant to State of Minnesota mandates governing solid waste management.

SECTION II: DEFINITIONS

For the purpose of this ordinance, the following terms shall have the meaning given them, unless the context clearly indicates otherwise.

Subsection 1. “**Board**” is the Board of Commissioners of Martin County.

Subsection 2. “**County**” is Martin County, a political subdivision of the State of Minnesota.

Subsection 3. “Generate” is the act or process of producing waste.

Subsection 4. “Generator” is any Person who generates Solid Waste in the County or pays for Solid Waste collection or disposal services, or any Person who pays for Solid Waste collection or disposal services on behalf of a Person who generates Solid Waste in the County.

Subsection 5. “Hauler” is a Person engaged in the business of collecting, transporting or disposing of Solid Waste generated in the County, and includes a Self-Hauler.

Subsection 6. “Hauler Services” means collection, transportation, processing, or disposal of Solid Waste generated in the County, including but not limited to regularly scheduled service, on-call service, one-time service, rental and other use of equipment such as waste containers, compactors, compactor boxes, and the like, and any other service that involves or facilitates collection, transportation, processing or disposal of waste materials as Solid Waste.

Subsection 7. “Solid Waste” is garbage, refuse, and other solid waste from residential, commercial, industrial, and community activities that the Generator of the waste aggregates for collection, but does not include auto hulks, street sweepings, ash, construction debris, mining waste, sludges, tree and agricultural waste, tires and other materials collected, processed and disposed of as separate waste streams.

Subsection 8. “Collection and Transportation License” shall mean the license required of all Persons in order to collect or transport Solid Waste that is generated within the County, pursuant to the County’s Solid Waste Ordinance.

Subsection 10. “Person” includes, but is not limited to an individual, business, Self-Hauler, Hauler, public or private corporation, partnership, joint venture, association, trust, unincorporated association, government or agency or political subdivision thereof, landfill operator, Generator, any other legal entity, and any receiver, trustee, assignee, agent, or other legal representative of any of the foregoing.

Subsection 11. “Prairieland” is the Prairieland Solid Waste Board, a joint powers board established pursuant to Minn. Stat. §471.59, which has Martin and Faribault Counties as its members.

Subsection 12. “Self-Hauler” is a Person who transports for disposal its own Solid Waste.

Subsection 13. “Service Area” is the area designated by the Board as an area needing Solid Waste Management Services pursuant to Minnesota Statutes § 400.08.

Subsection 14. “Solid Waste Management Fee” or “Fee” is the charge established by the Board, pursuant to Minn. Stat. § 400.08, payable to the County for Solid Waste Management Services provided within a Service Area.

Subsection 15. “Solid Waste Management Services” includes activities provided by the County, Prairieland, or Persons under contract with the County or Prairieland that support the waste management responsibilities described in Minnesota Statutes Chapters 115A, 116 and 400 including, but not limited to: waste reduction and reuse services; waste recycling; collection; processing through composting or waste-to-energy incineration; disposal; closure and post closure care of a solid waste facility; and response, as defined in Minn. Stat. § 115B.02, to releases from a solid waste facility or closed solid waste facility; and household hazardous waste management.

SECTION III: SERVICE AREA

Pursuant to Minn. Stat. §400.08, which grants Martin County the authority to establish and determine the boundaries of solid waste management service areas in the County, the boundaries of Martin County shall constitute the boundaries of the County’s solid waste management Service Area.

SECTION IV: GENERAL PROVISIONS

Subsection 1. Compliance. No Person shall collect, transport or dispose of Solid Waste generated in the County except in full compliance with this ordinance. This ordinance shall not prevent the transportation of Solid Waste through the County.

Subsection 2. Solid Waste Management Fee. A Solid Waste Management Fee may be imposed for Solid Waste Management Services provided within the Service Area. Generators (owners, lessees, or occupants of property in the County, or any or all of them) shall pay the Solid Waste Management Fee imposed in the manners set forth herein in amounts as established by the Board. Solid Waste Management Fee rates shall be just and reasonable. A copy of the current rate schedule shall be kept on file in the office of the County Auditor. In establishing or revising the rate schedule, the Board may take into account all factors relevant to solid waste management and disposal. Such factors include, but are not limited to: the character, kind and quality of service and of solid waste; the method of disposition; the number of people served at each place of collection; and all other factors that enter into the cost of providing service including, but not limited to depreciation and payment of principal and interest on money borrowed by the County for the acquisition and betterment of facilities; public education; recycling programs; household hazardous waste management; and solid waste management facility operating costs.

Subsection 3. Procedures for Establishing the Amount of Solid Waste Management Fee. The Board shall act to impose and establish the amount of the Solid Waste Management Fee, as well as the method or methods of collection, by resolution following a public hearing, and shall state the effective date of the Solid Waste Management Fee.

Subsection 4. Procedures for Adjusting the Amount of Solid Waste Management Fee. The Board may adjust the amount and method or methods of collection of the Solid Waste Management Fee by resolution following a public hearing, and shall state the effective date of

the adjusted Solid Waste Management Fee. There shall be a minimum thirty (30) day period prior to the effective date of such adjustment.

SECTION V: FEE COLLECTION AND REMITTANCE

Subsection 1. Methods of Billing and Collection. The County may use one or both of the following methods of billing and collecting the Solid Waste Management Fee:

- A. A per parcel fee collected through an assessment levy payable with the real estate taxes;
- B. A fee collected by Haulers that is based on the amount of waste generated.

Subsection 2. Unpaid Per Parcel Charges. On or before October 15th of each year, the Board shall certify to the County Auditor all unpaid outstanding per parcel charges and a description of the lands against which the charges arose. It shall be the duty of the County Auditor, upon order of the Board, to extend the assessments with interest rate provided for in Minn. Stat. §279.03, subd. 1, upon the tax rolls of the County for the taxes of the year in which the assessment is filed. For each year ending October 15th, the assessment with interest shall be carried into the tax becoming due and payable in January of the following year, and shall be enforced and collected in the manner provided for the enforcement and collection of real property taxes in accordance with the provisions of the State of Minnesota. The charges, if not paid, shall become delinquent and be subject to the same penalties and the same rate of interest as the taxes under the general laws of the state. Unpaid charges on tax exempt properties may be collected in Small Claims Court or through such other means as may be approved by the County Attorney.

Subsection 3. Fee Collection by Haulers.

- A. As a condition of maintaining its license, each hauler shall bill a portion of the Solid Waste Management Fee to and collect the Fee from all Persons to whom they provide Hauler Services, according to the rates and provisions established herein. In the event a municipality contracts or otherwise arranges for Hauler Services on behalf of Generators and elects to bill the Fee to and collect the Fee from Persons who are billed for such services, and subsequently remits all Fees collected to the County, a Hauler is not required to bill the Fee to or collect the Fee from such Persons in such municipalities. In the event a municipality contracts or otherwise arranges for Hauler Services on behalf of Generators and elects to bill the Fee to and collect the Fee from Persons who are billed for such services, and subsequently pays the Hauler for such services, including the Fees collected, the Hauler shall pay the Fees to the County.
- B. The Fee shall be placed on all Hauler Services provided on or after January 1, 2006. The Hauler must collect and remit the Fee for any Hauler Services provided on or after January 1, 2006, notwithstanding the fact that the Hauler may have billed or invoiced prior to January 1, 2006, for Hauler Services to be

provided on or after January 1, 2006. The County may contract with Prairieland or another entity to administer the Hauler-Collected Fee program, with administrative functions delegated to Prairieland or another entity, but decision-making and enforcement functions performed by the County.

- C. Each Hauler shall make reasonable efforts to collect the Fee. The Fee is imposed on the amount of Solid Waste generated and shall be collected by the Hauler either on the sales price of Hauler Services as incurred by any Person paying for Hauler Services, or on the actual amount of Solid Waste generated by the Generator, as determined by the Hauler and as verified by scale receipts from the waste management facility where the Solid Waste is deposited. If the sales price does not represent the fair market value of the Hauler Services, the Fee shall be calculated on the fair market value of those Hauler Services. Any sales tax or other tax or fee imposed by a unit of government is not subject to the Fee. If a hauler chooses to collect the Fee based upon the actual amount of waste generated, the Fee shall be Forty Dollars (\$40.00) per ton of Solid Waste.
- D. If a Generator does not pay the Fee to a Hauler or directly to the County, the County may directly bill the Generator or the owner, occupant, or lessee of the property on which the Solid Waste was generated. The amount billed will be calculated on the cost of Hauler Services incurred by the Generator. If the incurred cost is not known, the County may establish the Fee based on a reasonable estimate of such incurred costs.
- E. If the Fee is collected as a percentage of the sales price, the Fee imposed shall be the percentage of the sales price of Hauler Services that equates to Forty Dollars (\$40.00) per ton of solid waste generated by the Generator. A Hauler that uses the percentage of sales price collection method shall submit documentation to the County demonstrating that the percentage equates to \$40.00 per ton generated. The percentage shall be reviewed by the County, which shall approve, modify or disapprove the percentage.

Subsection 4. Remittance.

- A. The Fee collected by Haulers must be remitted to the County or its designee. Failure to remit the Solid Waste Management Fee collected may result in the revocation of the Hauler's license by the County.
- B. If a Generator makes partial payment to a Hauler, the Hauler shall then apply payment to the Fee proportionally.
- C. Each Hauler shall remit the Fee by the last day of the month following the month in which the Fee was collected by a Hauler, or incurred by a Self-Hauler. The County, if requested in writing by a Hauler, may grant a variance from this 30 day payment requirement due to Hauler billing practices. The duration of the variance will be determined by the County.

- D. In the event a Hauler does not receive the full amount billed on a statement or invoice when the statement or invoice includes the Fee, all payments the Hauler actually receives shall be divided on a pro rata basis between the amount owed the Hauler and the Fee owed the County. The Hauler must remit the pro rata amount of the Fee to the County, or its designee.

Subsection 5. Statements.

- A. Each Hauler shall separately itemize the Fee on any statement or invoice issued for payment of Hauler Services. The Fee must be identified as “County Solid Waste Fee” and no other name or description. Failure to separately itemize the Fee or to properly identify the Fee is a violation of this ordinance.
- B. Each Hauler is required to provide notification of the Fee to all Persons that are billed for Hauler Services. This notification is required prior to January 1, 2006, through a letter jointly developed with the County. For any Person billed for Hauler Services that has not received such notification, each Hauler is required to provide a notification of the Fee through a letter jointly developed with the County at the time the Person receives the first statement or invoice on which the Fee is billed.

Subsection 6. Reports. Each Hauler shall complete a Solid Waste Management Fee report in accordance with instructions and on forms provided by the County, or its designee. The Fee Report, accompanied by any required Fees, must be submitted by the last day of the month in which the Solid Waste Management Fee was incurred or collected by a Hauler, or incurred by a Self-Hauler. The Fee Report may include, but not be limited to, total gross billings and receipts for all collection and disposal services performed within the Service Area, the number of residential and nonresidential Generators within the Service Area, the number of tons collected within the Service Area and disposed of within and outside of the Service Area, and such other information as requested by the County.

Subsection 7. Calculation of Solid Waste Management Fee. If the County determines, after review of the Fee Report, or upon failure of a Hauler to submit the Fee Report, that the Hauler has not supplied appropriate information, the County may recalculate the Fee in accordance with this subsection. If the County finds that the information supplied by the Hauler is inaccurate, incomplete or understated, the County may determine an appropriate amount for the Fee due from the Hauler. The County shall send the Hauler a notice, by U.S. Mail, setting forth the recalculated Fee amount. The notice shall include a statement of reasons why the Fee has been recalculated. The County may base the recalculation on information in County records or on any data currently or previously supplied by the Hauler. The written notice shall be deemed received by the Hauler three (3) days after the date of mailing.

Subsection 8. Generators Without Hauler Service. The County may require Haulers to provide Generator lists or otherwise cooperate to identify Generators within the County without Hauler service. Such Generators may be billed directly for the Solid Waste Management Fee in an amount determined by the County. The County, in assessing the Solid Waste Management Fee, shall send a written notice to the Generator by U.S. Mail advising the Generator of the amount of the Solid Waste Management Fee. The notice shall be deemed received by the Generator three (3) days after the date of mailing.

Subsection 9. Examination of Records. The County or its duly authorized agents shall have the right to examine records, including access to computer records, maintained by a Hauler. The term “record” shall include, but is not limited to, all accounts of a Hauler. The County shall be allowed access at all reasonable times to inspect and copy at reasonable cost all business records related to a Hauler’s collection, transportation, and/or disposal of Solid Waste to the extent necessary to ensure that all fees required to be collected or paid have been remitted to the County. Such records shall be maintained by the Hauler for no less than six (6) years.

Subsection 10. Late Payment. A late payment penalty in the amount of one-half of one percent (0.5%) per month, or the maximum interest rate allowed by law, shall be imposed upon Solid Waste Management Fees collected from the Generator but not remitted by the Hauler to the County on or before the last day of the month following the collection. If a Hauler fails to bill and collect the Solid Waste Management Fee from the Generator, the Hauler shall pay the Generator’s Solid Waste Management Fee plus the late payment penalty. The late payment shall be calculated from the date the Solid Waste Management Fee should have been billed.

Subsection 11. Collection Actions. Exercise of any remedy under this subsection does not preclude exercise of other remedies.

- A. If a Generator fails to pay the Fee to a Hauler in a timely manner, the County may use any available legal remedies to collect the overdue, unpaid Solid Waste Management Fees from the Generator, including, but not limited to, the process to collect the Fee via the property tax pursuant to Section V, Subsection 2, above.
- B. If a Hauler has collected Fees and failed to remit them to the County in a timely manner, the County may use any available legal remedies to collect the Fees from the Hauler.
- C. If a Self-Hauler fails to pay the Fee to the County in a timely manner, the County may use any available legal remedies to collect the Fee from the Self-Hauler.
- D. Unpaid Fees may be collected from tax-exempt properties as otherwise provided in this section.

SECTION VI: VIOLATIONS AND PENALTIES

Subsection 1. Penalty. Any Person who hauls Solid Waste and willfully or negligently fails to bill, fails to collect, or fails to pay or remit to the County the Fee, or any Generator

without Hauler service who fails to pay to the County the Fee in the amount determined by the County, may be required to pay a civil penalty of up to \$1,000 for each violation, as determined by the County. Written notice of the penalty shall be mailed to the Person or Generator by U.S. Mail, and shall be deemed to be received by the Person or Generator three (3) days after the date of mailing.

For the purpose of this subsection, a Person who hauls Solid Waste for a Generator who subsequently fails to pay its bill has not acted negligently. This subsection shall not preclude prosecution for any misdemeanors, gross misdemeanors, or felonies under State of Minnesota law committed by such Person while hauling Solid Waste.

Subsection 2. Injunctive Relief. The County may institute appropriate actions or proceedings, including application for injunctive relief, action to compel performance or other appropriate actions to prevent, correct or abate any violation or threatened violation of this ordinance.

Subsection 3. Costs. The County may recover costs, including staff and other related costs, incurred to enforce compliance with the provisions of this ordinance

SECTION VII: APPEALS

Subsection 1. Right of Appeal. Any Person or Generator aggrieved by a decision of the County in accordance with the provisions of this ordinance shall have the right to appeal the decision by serving the Board with a request for hearing. The request for hearing must be received within thirty (30) days after the Person or Generator receives written notice of the decision. If the Person or Generator fails to request a hearing with the time prescribed, the Person or Generator shall forfeit any right to a public hearing. Upon receipt of a written request for a hearing, the Board shall set a hearing not earlier than ten (10) days and not later than thirty (30) days from the date of receipt of the request.

Subsection 2. Hearing. Whenever a hearing is requested the hearing shall be governed by the following procedures:

- A. The Board shall have the power to conduct public hearings pursuant to this section. Upon receipt of a request for hearing, the Chair of the Board shall appoint three members of the Board (“Panel”) to conduct the hearing on behalf of the Board. The Panel shall submit to the Board, in writing, findings of fact and recommendations, and the Board may base its decision on this report.
- B. The Board shall notify the applicant in writing as to its decision within five (5) working days after a decision is reached.
- C. Any applicant aggrieved by a decision of the Board shall have the right to appeal to the District Court on questions of law and fact within thirty (30) days of the date of the decision.

SECTION VIII: SEVERABILITY

It is hereby declared to be the intention of the Board that the provisions of this ordinance are separable in accordance with the following:

Subsection 1. Validity of Provisions. If any court of competent jurisdiction shall rule that any provision of this ordinance is invalid, other provisions not specifically included in said judgment shall not be affected.

Subsection 2. Specific Application. If any court of competent jurisdiction shall rule that the application of any provision of this ordinance is invalid to a particular Generator, structure, site, facility, operation or Hauler such judgment shall not affect the application of said provision to any other Generator, Hauler, structure, site, facility or operation not specifically included in the judgment.


SECTION IX: PROVISIONS ARE CUMULATIVE

The provisions in this ordinance are cumulative and are additional limitations upon all other laws and ordinances covering any subject matter in this ordinance.

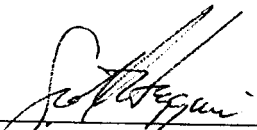
Section 2. That this ordinance amendment shall be in full force and effect following the adoption by the Martin County Board of Commissioners and publication as required by law.

NOW, THEREFORE, IT IS RESOLVED that this ordinance is hereby adopted this 20th day of September, 2005.

**BOARD OF COMMISSIONERS
MARTIN COUNTY, MINNESOTA**



Dan Schmidtke, Chair

Attest: 

Scott Higgins, County Coordinator

