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Ordinance No. 2007-02

AN ORDINANCE OF BUTTE COUNTY, IDAHO AMENDING BUTTE COUNTY ORDINANCE 1-2001 AS ADOPTED AND PASSED BY BUTTE COUNTY. THIS ORDINANCE IS TO CONSOLIDATE ALL ORDINANCES OF BUTTE COUNTY RELATED TO SOLID WASTE AND REPEALING AN EXEMPTION FOR THE DEPARTMENT OF ENERGY LAND AND AGENCIES.

BE IT ORDAINED by the Board of County Commissioners of Butte County, Idaho:

I. General Provisions:

1. Declaration of Policy and Purposes:
   It is the purpose of this ordinance to institute within the County of Butte, State of Idaho, an orderly solid waste disposal system, and to provide for the protection of public health, environmental quality, public safety and welfare.
   1.1 Pursuant to chapter 44, title 31, and chapter 74, title 39, Idaho Code, the Board of Butte County Commissioners has the authority and duty to establish sanitary standards and a method of collection and disposal of waste for the promotion of individual and community health and the prevention of the outbreak and spread of dangerous, contagious and infectious disease.
   1.2 Through this Ordinance, the board intends to establish a comprehensive countywide system for the proper handling of all solid waste, including recyclable materials, originating from residential, commercial, agricultural and industrial operations, and other sources, to prevent land, air and water pollution, insect and rodent infestation, the creation of fire hazards, and to conserve the natural, economic and energy resources of the County.
   1.3 These regulations shall apply to all lands within the territory of Butte County and to incorporated areas where the Board of County Commissioners has entered into agreements with the governing bodies of such areas. It shall be unlawful hereafter in such areas to keep, collect, haul, transport or dispose of waste except as herein provided.
   1.4 Should any section, clause or provision of this chapter be declared by a court of competent jurisdiction to be invalid, the same shall not affect the validity of this chapter as a whole or any part thereof, other than the part so declared to be invalid, each section, clause and provision hereof being declared severable.

2. Definitions:
   2.1 Solid Waste Disposal System means lands, sites, facilities, equipment and manpower necessary for collection, transportation, storage,

treatment, processing, reuse, recycling or other means necessary for the disposal of solid waste.

2.2 Solid Waste Any garbage or refuse, sludge from a wastewater treatment plant, water supply, or air pollution control facility and other discarded material including solid, semisolid, or contained gaseous material resulting from industrial, commercial mining, and agricultural operations and from community activities, as well as all other matter of solid substances which have been, or are intended to be, abandoned or discarded by their owner or possessor on private or public lands and as such may be additionally defined in the Idaho Code, but does not include solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under 33 USC 1342.

2.3 Sanitary Landfill An area of land or an excavation in which wastes are placed for permanent disposal, excluding land application units, surface impoundments, injection wells or waste piles.

2.4 Solid Waste Disposal Site A board approved location where any treatment, utilization, processing or final deposition of solid waste occurs, including, but not limited to, sanitary landfills, waste transfer stations, and public tipping areas.

2.5 Commercial Waste Means all types of solid waste generated by entities including, but not limited to, stores, offices, restaurants, warehouses and other non-manufacturing activities, excluding residential and industrial wastes.

2.6 Industrial Waste Solid Waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under subtitle C of RCRA. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: electric power generation; fertilizer and agricultural chemicals; food and related products and byproducts; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

2.7 Collection Site A fixed intermediate facility, approved by the board for the centralized collection of solid waste and other collected material prior to transport for final disposal.

2.8 Unit of use The amount of waste generated by one private household or dwelling.

2.9 Residential Solid Waste All types of waste generated from a private household or dwelling to sustain living or quality of life for a family residing at that residence. Generally, waste quantities will not exceed ninety six (96) gallons (3 garbage cans) per week. Home business waste falls under the commercial definition and is excluded from the

definition of residential solid waste. As with all solid waste, residential solid waste is subject to the provisions and restrictions of any and all fee resolutions passed pursuant to this Ordinance.

2.10 Major Solid Waste Generator Commercial, Industrial, Governmental, or non-municipal solid waste generator, that generates 5% or more of the County's solid waste.

3. Disposal Sites: The following are established disposal sites in Butte County:

   a) The principal disposal site in Butte County shall be the site previously known as the Arco Sanitary Landfill located Northeast of the City of Arco and described as follows:

   An area approximately 1.5 miles East of the City of Arco and approximately located in the East ½ of Section 32. Township 4 North, Range 27 East Boise Meridian.

   b) A secondary disposal site to be known as the Howe Sanitary Landfill which is located North of the Howe town site and described as follows:

   An area approximately one-half mile North of the Howe town site and approximately located in the NW ¼ of the SW ¼ of Section 4, Township 5 North, Range 29 East Boise Meridian.

4. Establishment of other Disposal Site. The Board of County Commissioners may designate other disposal sites or modify the established sites by resolution. All new designated sites and modifications to existing sites shall be in accordance with the solid waste laws of the State of Idaho and the rules and regulations established the Department of Environmental Quality and Department of Health and Welfare.
5. Collection Sites. The Board of County Commissioners may establish collection sites as needed by resolution. Resolutions establishing collection sites shall be published in a newspaper of general circulation within the County. The resolution shall state the location of the collection site and limitations on the waste allowed at the collection site. Further, the Board of County Commissioners may alter, add to or delete from the list of collection sites by resolution, which shall also be published in a newspaper of general circulation in the County.

II. DISPOSAL AT DESIGNATED SITES IN COMLIANCE WITH RULES AND REGULATIONS OF DEPARTMENT OF ENVIRONMENTAL QUALITY AND DEPARTMENT OF HEALTH AND WELFARE REQUIRED.

1. All disposal of solid waste shall only be at designated disposal sites, and shall be done in such a manner as to comply with rules and regulations promulgated and adopted by the Department of Environmental Quality

and the Department of Health and Welfare. It shall be a violation of this Ordinance for any person, except at a designated disposal, throw away, dump, or discard any type or nature of solid waste on any public lands, rights of way of any kind, or private land of another.

2. All solid waste generated in Butte County shall be disposed only at the sites established in Section I(3) of this Ordinance, in order to promote the public policy goals and objectives of Butte County for energy, recycling and protecting the resources of Butte County. The Butte County Solid Waste Department shall endeavor, to the extent of the resources available, to separate recyclable material at the disposal sites. The Board of County Commissioners may, by resolution, provide for and modify a list of recyclable materials to be accepted and separated at the disposal sites. The Board of Commissioners may, by resolution adjust the fees and schedule in Sections V-VII of this Ordinance, to include fees for solid waste with recycled materials separated before disposal by the solid waste generator.

III. UNLAWFUL TO NEGLIGENTLY TRANSPORT SOLID WASTE FOR DISPOSAL. It shall be unlawful for any person transporting solid waste to a collection site or disposal site to discard, intentionally or negligently, any solid waste along public highways of this County.

IV. TIRES NOT TO BE ACCEPTED AT SOLID DISPOSAL SITES OR COLLECTION SITES. Tires shall not be accepted at any Butte County solid waste disposal site or collection site. It shall be a violation of this Ordinance for any person to throw away, dump or discard any tires at any Butte County disposal site or collection site. Tires shall be taken to a tire dealership for disposal.

V. ESTABLISHMENT OF FEES.

1. Establishment of Fee Schedule. The Board of County Commissioners shall establish a fee schedule. The fee schedule shall be established by Resolution of the Board of County Commissioners. The Fee Schedule shall be published in a newspaper of general circulation of Butte County.

2. Modification of Fee Schedule. The Board of County Commissioners may review the Fee Schedule annually at the annual budget meeting. In the event, the Board of County Commissioners proposes to change the Fee Schedule at a time other than the annual budget meeting, the Board shall give notice of its intent to modify the Fee Schedule and the date and time of a public hearing at which interested persons may attend and present evidence and testimony concerning the proposed change. Any amendments or modifications to the Fee Schedule shall be made by Resolution and published in a newspaper of general circulation in Butte County.

3. Contents of Fee Schedule. The Fee Schedule shall consist of the following:

3.1 Fee for One Unit of Use or Household Fee.

3.2 Special Fees for the disposal of waste not ordinarily considered household waste and/or requiring special handling by the system. Special Fees may be established for items for disposal including but not limited to dead animals, construction waste, automobiles, industrial waste (not hazardous), non-municipal waste etc.

3.3 Fee for Major Solid Waste Generator or non-municipal waste.

VI. ASSESSMENT OF ANNUAL FEES. All Users shall be assessed an annual User Fee.

1. Users Assigned Units of Use.

1.1 Private Residents shall be assigned an annual user fee equivalent to the fee for one (1) unit of use. This is the fee designated as the household fee.

1.2 All commercial users, government and public agencies shall be assigned units of use. The Board of County Commissioners shall base the assigned units of use upon a determination of the estimated volume of solid waste produced as compared to an average household. The assessed fee shall be the units of use multiplied by the number of assigned units of use.

1.3 The County Clerk shall maintain a list of all commercial users, governmental agencies and the units of use assigned to each user.

1.4 Any User assigned more than one unit of use may petition the Board of County Commissioners between November 1 and December 1 of any year, to review the assigned units of use. The Board of County Commissioners may consider changes to any User's assigned units of use of the first Commissioner meeting in the month of December. In the event the Board of County Commissioners is considering a change to any User's assigned units of use who has not filed a petition, it shall give the User notice of intent to review the assigned units at least 10 days before the hearing. Any review of the assigned units of use shall be conducted according to the rules set forth in the Idaho Administrative Procedures Act, Title 67, Chapter 52 Idaho Code.

VII. COLLECTION OF FEES.

1. Collection of Annual User Fee. All assessed fees shall be a special assessment levied and assessed on the real property served, and billed with the tax notices on said properties, and due as set out in said same manner as collection of ad valorem taxes, and shall become a lien on the property assessed. Failure on the part of any User exempt from the payment of ad valorem taxes to pay the assessed fee may result in termination of the right to dispose solid waste at the disposal sites in Butte County.
2. Collection of Special Fees. Persons, businesses and entities disposing non-household waste in categories designated by the Board of County Commissioners pursuant to paragraph

V(3) will be assessed the fee at the time of disposal. The special fee shall be paid within 90 days of the assessment to the Butte County Auditor's Office. The Butte County Auditor is authorized to send statements to Users accordingly. Failure to pay the assessment may result in the loss of disposal privileges until the amount is paid.

3. Collection of Major Solid Waste Generator Fees. Persons, businesses and entities disposing waste in categories designated by the Board of County Commissioners pursuant to paragraph V(3) will be assessed a fee to provide for the exceptional burden placed upon the Solid Waste Disposal System, including but not limited to: uncommonly large amounts of solid waste to be processed by the system in one instance; additionally resources for oversight and inspection; and increased hazards to health and safety of people and property for large concentrations of solid waste. The fee shall be paid at the time of the issuance of the Permit to the Butte County Auditor's Office. The Butte County Auditor is authorized to send statements to Users accordingly. Failure to pay the assessment may result in the loss of disposal privileges until the amount is paid.

VIII. REPEAL OF EXEMPTION OF INL PROPERTY. WHEREAS Department of Energy activities may involve the collection and disposal of Solid Waste within Butte County; and WHEREAS Butte County intends to provide a process and standards for Solid Waste in order to protect the health and safety of the public, the Lands owned and operated by the United States Department of Energy or its designated agents and known as the Idaho National Laboratory (INL) shall no longer be exempt from this Ordinance. Department of Energy or its authorized agent(s) may apply, in writing, to the Board of County Commissioners within fourteen (14) days of the effective date of this Ordinance for an extension of time due to hardship. The Board of County Commissioners must physically receive the request for an extension of time within the fourteen (14) day period.

IX. CONTRACT FOR DISPOSAL, COLLECTION OR TRANSFER

1.1 No person shall dispose of Solid Waste within the County at a location not approved for disposal, collection or transfer by the Board of County Commissioners and State and Federal regulatory agencies or without first having entered into a contract with Butte County.

1.2 Within the unincorporated area of Butte County the board may, by exclusive contract, provide for the collection, transfer, hauling and disposal of solid waste. The issuance of a contract or contracts is hereby deemed to be in the public interest for adequate and uniform collection and disposal of solid waste. Exclusive contract or contracts for the

collection, transfer, hauling and disposal of solid waste may be granted by the board to one or more contractors and may be granted for a period of years determined by the parties, but for no more than twenty five (25) years, for the construction, establishment, acquisition, maintenance and/or operation of a solid waste collection system and sanitary disposal system for both public and private purposes, using the streets and rights of way in Butte County. In accordance with Idaho Code, section 31-4403(6), such contract may be negotiated or advertised for bids, as the board deems desirable. No other person other than the board is authorized or allowed to contract on the behalf of Butte County regarding the collection or disposal of waste within the unincorporated area of Butte County. Notwithstanding the provisions of this section, the county by franchise or contract may authorize the establishment and operation of disposal sites within the county to enable the county to satisfy its obligations to provide landfill capacity and to manage and control the ownership, disposition and ultimate disposal of solid waste within the county. Terms and conditions of such franchises or contracts shall comply with this chapter and applicable law.

1.3 DISPOSAL PERMIT Permits for Solid Waste Disposal Sites or Collection Sites other than the sites established by section I(3)-(5) may be obtained from the Board of County Commissioners. A Solid Waste Disposal Permit shall be required to operate or own all Solid Waste Disposal Sites or Systems in Butte County, including but not limited to Sanitary Landfills, Collection Sites or Waste Transfer Stations, and all other disposal sites. This requirement shall not apply to a municipal corporation operating a collection system for its residents, wholly within its own corporate limits. To obtain a permit for operation of a Disposal Site, the applicant must show that it meets at least the following criteria:

a) That the site proposed complies with requirements of the County Zoning Ordinance and other applicable land use regulations of the County;
b) That the site has been reviewed and approved as an appropriate location for a Solid Waste Disposal or Collection Site by the Southeastern Idaho Health District, and any State or Federal agency with jurisdiction;
c) That an operations plan for use and closure of the site has been approved by the Southeastern Idaho Health District and any State or Federal agency having jurisdiction;
d) That any private site operator has posted a performance bond with the County to guarantee adequate financial resources to assure proper operation and closure of the site;
e) That the owner and/or operator has provided adequate safeguards to see that no hazardous wastes, as such are classified by State and Federal Law and Regulations, are to be disposed of in the Solid Waste disposal or collection site;

f) The application shall have been first reviewed and signed by the director of the Butte County Solid Waste Department.

g) The owner and/or operator agrees to provide quarterly reports to the Butte County Director of Solid Waste including but not limited to, details of quantities of solid waste collected or disposed; location of the activities of collection and disposal; changes to the approved permit conditions, if any; violations involving waste of any kind or nature issued by the State of Idaho or any Federal Agency; and changes in any methods of collection or disposal. The owner and/or operator agrees to submit to random inspections of all collection and disposal sites by the Solid Waste Director or the Butte County Sheriff's Office.

1.4 The Board of County Commissioners may designate the form of the application and the information needed on the application. The Butte County Commissioners shall determine whether to accept the application. Upon approval of an application and issuance of a permit, the Board of County commissioners may require a contract or franchise agreement for the disposal or collection of Solid Waste in Butte County.

a) Permit Fees. Fees for permit issuance shall be established by the Board of County Commissioners at the time a permit is issued and shall be based the costs to Butte County to provide adequate administration, inspection, and public safety and health protection for the specific activities permitted.

X. ADMINISTRATION

1. Responsible Agency: Butte County, Idaho.

1.1 The Board of County Commissioners may, by resolution, appoint such County employees to act as director and other support personnel of the County Solid Waste Disposal System as necessary. The resolution shall provide for the responsibilities and roles of the Director and other personnel that are not specifically provided herein.

1.2 The Director of Solid Waste shall report directly to the Board of County Commissioners as well as initiate proceedings, with counsel from the Butte County Prosecuting Attorney to enforce this Ordinance.

2. Functions and Power:

2.1 As defined under Idaho Code Section 31-4401 through Section 31-4411.

2.2 To establish as orderly solid waste disposal system and to establish the necessary fees and policies to adequately administer said system.

XI UNLAWFUL TO DISPOSE OF WASTE FROM OUTSIDE COUNTY.

It shall be unlawful for any person, acting for him/herself, or on behalf of any other person or any business, to dispose at any Butte County landfill, any solid waste, as that term is defined that originated from any place outside of the geographic

boundaries of Butte County, without a resolution approving such activity, by the Board of County Commissioners.

XII VIOLATIONS PUNISHABLE AS MISDEMEANOR AND BY CIVIL PENALTIES.

1. Violation of the terms of this Ordinance, including non-payment of fees assessed, is hereby declared to be a Misdemeanor punishable by a fine not to exceed ONE THOUSAND DOLLARS ($1,000.00) and/or imprisonment in the County Jail for period not to exceed SIX (6) MONTHS.
2. IN ADDITION to the criminal penalties, any person convicted of disposing of solid waste at a place other than a designated solid waste disposal site shall be assessed civil damages in an amount of three (3) times the actual damage, to be used to restore the lands to their original state; and any remainder of the damages collected after restoration shall be used for maintenance and operation of the solid waste disposal system.
3. Commercial, Industrial, governmental entities or other Non-municipal solid waste generators in violation of Section IX of this Ordinance shall be subject to the following administrative civil penalties:

3.1 Failure to obtain a Solid Waste Disposal Permit and all other violations of any provision under Section IX shall be considered an independent and separate violation for each and every day such violation occurs and the Board of County Commissioners shall impose a penalty for each violation of not less than TWENTY FIVE THOUSAND DOLLARS ($25,000.00) and no more than ONE HUNDRED THOUSAND DOLLARS ($100,000.00). Failure to comply with an Order or Subpoena of the Board of County Commissioners pursuant to this section shall constitute a separate violation and subject to the penalties herein.

i. In formulating the administrative penalty of a violator, factors to be considered by the Board of County Commissioners include, but are not limited to the following:
    1. The violator's history of contamination involving solid or hazardous wastes;
    2. Previous violations involving hazardous or solid waste;
    3. The violators financial status;
    4. The amount of waste in question;
    5. The ability and effort of the violator to avoid violations of this Ordinance or any other Solid Waste regulations.
    6. The Board of County Commissioners shall provide findings regarding each of the factors stated above.

3.2 The administrative penalties collected shall be paid into the Butte County Treasury to be used for further administration or improvement of Solid Waste Disposal Systems in Butte County, or other environmental programs and administration as the Board of County Commissioners direct, and all other activities that are necessary and proper to execute the policies of Butte County.

3.3 Contested administrative hearings pursuant to a Notice of Violation or Cease and Desist Order shall be conducted according to the rules set forth in the Idaho Administrative Procedures Act, Title 67, Chapter 52 Idaho Code.

EFFECTIVE DATE. This Ordinance shall be in full force and effect on and after its passage, approval and publication according to law.

PASSED AND APPROVED by the Board of Commissioners of Butte County, Idaho this 9 day of July, 2007.

SIGNED by the Chairman of the Board of Commissioners of Butte County, Idaho this 9 day of July, 2007.

BUTTE COUNTY IDAHO
Board of County Commissioners

By: _____
SETH E. BEAL, Chairman

ATTEST:

_____
TRILBY MCAFFEE, Clerk
Butte County Board of Commissioners