

OTTER TAIL COUNTY
SOLID WASTE DESIGNATION ORDINANCE
(Effective on _____, 2019)

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Draft

OTTER TAIL COUNTY

SOLID WASTE DESIGNATION ORDINANCE

(Effective _____, 2019)

Section 1. PURPOSE

An ordinance regulating the transportation and delivery of Solid Waste generated within Otter Tail County, Minnesota; defining the geographic area and the types and quantities of Solid Waste subject to designation; specifying the points of delivery of the Designated Waste; requiring that Designated Waste be delivered to Designated Facilities; excepting from the ordinance certain waste materials; and stating additional regulations governing Haulers; and other matters.

The County Board of Otter Tail County (“County”), Minnesota does ordain:

Section 2. FINDINGS

The County Board hereby finds, determines and declares as follows:

Subsection 2.1.

Pursuant to a Joint Powers Agreement originally executed in 2010 and as amended in 2014 (the “**Joint Powers Agreement**”), Becker, Clay, Otter Tail, Todd and Wadena Counties have established the Prairie Lakes Solid Waste Management Authority Joint Powers Board (the “**Authority**”) pursuant to Minnesota Statutes §471.59 to provide for the joint ownership, management and operation of the Perham Resource Recovery Facility (“**Perham Facility**”) and to provide for the cooperation on other Solid Waste management activities among the five counties.

Subsection 2.2.

The Authority has recently upgraded and expanded the Perham Facility to include a materials recovery facility for removal of undesirable materials and recovery of Recyclable Materials contained in MMSW. It also added a second boiler, air pollution control equipment, and issued debt to help finance the improvements.

Subsection 2.3.

The County has approved and adopted the Authority’s Joint Designation Plan, consistent with Minnesota Statutes §§115A.80 to 115A.893. The Joint Designation Plan was approved by the Commissioner of the Minnesota Pollution Control Agency on September 30, 2015, as required by Minnesota Statutes §115A.84.

Subsection 2.4.

The Joint Designation Plan contemplates the adoption of this Designation Ordinance in Otter Tail County and similar designation ordinances in the other Member Counties to ensure that all Designated Waste is delivered to Designated Facilities.

Subsection 2.5.

In accordance with Minn. Stat. §115A.85, subd. 2, the County conducted a public hearing on designation in the County on November 24, 2015, after providing the notice required by Minn. Stat. §115A.85, subd. 2.

Subsection 2.6.

Pursuant to Minn. Stat. §115A.85, subd. 3, during the 90-day minimum period following the hearing in Subsection 2.5, the County negotiated with persons entitled to written notice under Minn. Stat. §115A.85, subd. 2, for the purpose of developing contractual agreements between the County, Haulers, and Self-Haulers for the use of the Perham Facility.

Subsection 2.7.

This Designation Ordinance is necessary to assure the delivery of Acceptable Waste to the Designated Facilities to ensure proper management of Solid Waste in the County and the financial success of the Perham Facility. This Designation Ordinance will further the purposes and policies set forth in Minnesota Statutes, Sections 400.01 and 115A.02, specifically, the reduction of Solid Waste generated, separation and recovery of energy and materials from Solid Waste, reduction in indiscriminate dependence on land disposal of Solid Waste, coordination of Solid Waste management among political subdivisions, and the orderly and deliberate development and financial security of Solid Waste facilities.

Section 3. TITLE AND PURPOSE AND DEFINITIONS

The Title of this Ordinance is the Otter Tail County Solid Waste Designation Ordinance.

The purpose of this Ordinance is to assure that Designated Waste is managed in an environmentally sound manner in order to protect the public health and welfare, environment and investments in the integrated Solid Waste management system of Otter Tail County made pursuant to State mandates governing Solid Waste management.

The capitalized terms defined in Sections 1 and 2 shall have the same meanings throughout this Designation Ordinance. In addition, the following words and phrases when used in this Designation Ordinance, unless the context clearly indicates otherwise, shall have the meaning ascribed to them in this Section.

“**Acceptable Waste**” means garbage, refuse and other Solid Waste from residential, commercial, industrial, and community activities that the Generator aggregates for collection, but does not include Unacceptable Waste.

“**Agency**” means the Minnesota Pollution Control Agency, its Commissioner, or representatives.

“**Agreements**” means the Waste Delivery Agreements between the County and the Haulers requiring the delivery of Acceptable Waste to the Designated Facilities.

“**Designated Area**” means the geographical boundaries of Otter Tail County.

“**Designated Facilities**” means the Perham Facility and the designated transfer stations described in Section 5 to which waste is designated.

“**Designated Waste**” means Acceptable Waste that is generated in the Designated Area and which is not exempted in Section 7.

“**Designation**” means the process authorized by Minn. Stat. §§ 115A.80 to 115A.893.

“**Designation Ordinance**” means this Ordinance.

“**Effective Date**” means the date that this Designation Ordinance shall be in full force and effect which shall not be less than sixty (60) days after adoption of this Designation Ordinance by the County.

“**Generator**” means any Person who produces Solid Waste in the Designated Area.

“**Haulers**” means any person that provides collection or transportation services for Solid Waste or source separated materials but does not include self-hauler.

“**Hazardous Waste**” means any refuse, sludge, or other waste material or combinations or refuse, sludge, or other waste materials in solid, semi-solid, liquid, or contained gaseous form which because of its quantity, concentration, or chemical, physical, or infectious characteristics may: (a) cause or significantly contribute to an increase in mortality or an increase in serious irreversible, or incapacitating reversible illness; or (b) pose a substantial present or potential hazard to human health or the environment when improperly treated, stored transported, or disposed of, or otherwise managed. Categories of hazardous waste materials include, but are not limited to: explosives, flammable, oxidizers, poisons, irritants, and corrosives.

“**Holidays**” are New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, and Christmas Day.

“**Joint Designation Plan**” means the Authority’s Joint Designation Plan as approved by the Agency on September 30, 2015.

“**Member County**” means any county that participates in the Authority and is party to the Joint Powers Agreement.

“**Permit-By-Rule Transfer Facility**” means an intermediate, limited solid waste collection facility that accepts waste from individual residents that self-haul, where the owner or operator of the facility is deemed to have obtained a solid waste management facility permit in accordance with Minnesota Admin. R. § 7001.3050, Subp. 3 without making an application for it, and in

which waste collected from any source is temporarily deposited to await transportation to another waste facility.

“**Person**” means any human being, any municipality or other governmental or political subdivision or other public agency, any public or private corporation, any partnership, firm, association, or other organization, any receiver, trustee, assignee, agent, or other legal representative of any of the foregoing, or any other legal entity.

“**Recyclable Material**” means materials that are separated from Solid Waste for the purpose of recycling, including paper, glass, plastics, metals, automobile oil, and batteries.

“**Resource Recovery**” is defined in Minn. Stat. Section 115A.03, subd. 27 as the reclamation for sale, use, or reuse of materials, substances, energy, or other products contained within or derived from waste.

“**Resource Recovery Facility**” is defined in Minn. Stat. Section 115A.03, subd. 28 as a “waste facility established and used primarily for resource recovery, including related and appurtenant facilities, such as transmission facilities and Transfer Stations primarily serving the resource recovery facility”.

“**Self-Hauler**” means a generator who does not contract with a commercial hauler, but instead collects and transports its own Solid Waste. A self-hauler shall not provide collection and transportation services to someone else for compensation.

“**Solid Waste**” means garbage, refuse, construction and demolition debris, sludge from a water supply treatment plant or air contaminant treatment facility and other discarded waste materials and sludge, in solid, semi-solid, liquid, or contained gaseous form, resulting from industrial, commercial, mining and agricultural operations, and from community activities. It does not include hazardous waste, animal waste used as fertilizer, earthen fill, boulders, rock, sewage sludge, solids or dissolved material in domestic sewage or dissolved materials in irrigation return flows or other common pollutants in waste resources, such as silt. It does not include dissolved or suspended solids in industrial waste water effluents or discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as amended. It also does not include source, special nuclear, or by-product materials as defined by the Atomic Energy Act of 1954, as amended.

“**Tipping Fee**” means the fee at a waste facility for waste delivered to that facility based upon the weight, volume, character, or type of waste.

“**Unacceptable Waste**” means those Solid Wastes which cannot be accepted for processing or disposal as determined by the Designated Facilities.

“**Waste**” means any type of waste material.

Section 4. APPLICATION OF ORDINANCE

This Designation Ordinance shall govern all Persons who generate, transport or dispose of Designated Waste or contract for transportation or disposal of Designated Waste generated within the Designated Area.

Section 5. DESIGNATION

Except as otherwise provided herein, on and after the Effective Date, all Designated Waste generated within the Designated Area must be delivered to a Designated Facility, as detailed below, and may not be delivered to any other site or facility for final disposal. This requirement is binding on all Persons.

The Designated Facilities are components of Otter Tail County’s integrated Solid Waste management system and are as follows, or as set by resolution of the County Board:

Perham Facility: Perham Resource Recovery Facility
 201 6th Ave NE
 Perham, MN 56573

Transfer Stations: Henning Transfer Station
 51122 Rocky Ridge Rd.
 Henning, MN 56551

Fergus Falls Transfer Station
 275 Airport Drive
 Fergus Falls, MN 56537

Haulers must deliver all quantities of Designated Waste to one of the Designated Facilities above.

Self-Haulers must deliver, or cause to be delivered, all quantities of Designated Waste to one of the Designated Facilities above, or Self-Haulers may deliver to any of the Permit-By-Rule Transfer Facilities listed below, so long as the Designated Waste is transferred to one of the Designated Facilities for final management.

- Battle Lake Transfer Station
 36005 MN Highway 210, Battle Lake, MN 56515
- Pelican Rapids Transfer Station
 1101 9th Street NW, Pelican Rapids, MN 56572
- NE Transfer Station/Demolition Landfill
 50356 US Highway 10, New York Mills, MN 56567
- Parkers Prairie Transfer Station
 56320 County Highway 46, Parkers Prairie, MN 56572

Section 6. UNACCEPTABLE WASTE

Otter Tail County hereby reserves the right to reject Unacceptable Waste delivered to the Designated Facilities. If at any time the County or a Designated Facility decides that certain substances previously classified as Acceptable Waste are harmful to the operation of a Designated Facility, or to public health and safety, the County or Designated Facility as applicable may reclassify such substances as Unacceptable Waste, and shall notify all Persons subject to Designation.

Section 7. MATERIALS NOT SUBJECT TO DESIGNATION

Designation does not apply to:

1. Materials that are separated from Solid Waste and recovered for reuse in their original form or for use in manufacturing processes. For the purposes of this section, “manufacturing processes” does not include the treatment of waste after collection for the purpose of composting.
2. Materials that are processed at a Resource Recovery Facility, other than the Perham Facility, at the capacity in operation at the time the Joint Designation Plan was approved by the Agency.
3. Materials that are separated at a permitted transfer station located within the boundaries of Otter Tail County for the purpose of recycling the materials if:
 - a) The transfer station was in operation on January 1, 1991; or
 - b) The materials were not being separated for recycling at the Perham Facility at the time the transfer station began separation of the materials.
4. Recyclable Materials that are:
 - a) Generated in Otter Tail County that are being recycled, and residuals from the recycling if there is at least an 85 percent volume reduction in the Solid Waste processed at the recycling facility and the residuals are managed as separate waste streams; or
 - b) Separated for recycling at a transfer station located outside the Designated Area, that meet the volume reduction and residual management criteria in Section 7(4)(a) above, and that have been excluded from Designation pursuant to the process set forth in Minn. Stat. § 115A.84, subd. 5.
5. Acceptable Waste that is delivered to a Designated Facility pursuant to Waste Delivery Agreements (Agreements) with the County for the term of the Agreements, and any mutually agreed upon renewals of any such Agreements.
6. Unacceptable Waste.

7. Any waste materials excluded pursuant to Minn. Stat. § 115A.84, subd. 4, or the petition process provided in Minn. Stat. § 115A.893.

Section 8. SUSPENSION OF DESIGNATION REQUIREMENT

The County, by resolution of the County Board, may suspend the Designation requirement at any time. Reasons the County may suspend the Designation requirement include, but are not limited to, the following: natural disaster, or damage to or closure of part or all of the Designated Facilities. If the County suspends the Designation requirement, no Person may deliver any waste to the Designated Facilities unless in accordance with the resolution of the County Board or until such time as the County reinstates the Designation requirement. This provision does not relieve any Person of any obligation to comply with all other applicable federal, state or local laws or ordinances. The County will provide reasonable notice of any suspension and subsequent reinstatement of the Designation requirement to Haulers and other Persons in the County.

Section 9. RATES AND CHARGES

Persons delivering waste to a Designated Facility shall pay the County a tipping fee for each ton of waste delivered. The tipping fee shall be posted by the County at the Designated Facility, on the County's web page, and may be amended from time to time pursuant to the procedures and principles in Otter Tail County Solid Waste Ordinance, Section 4.

Section 10. TITLE TO DESIGNATED WASTE

Generators and Haulers retain all rights, title (ownership) and responsibilities with respect to all Designated Waste until the Designated Waste is delivered to a Designated Facility pursuant to this Ordinance, and is deemed by the County to be Acceptable Waste. Self-Haulers retain all rights, title (ownership) and responsibilities with respect to all Designated Waste until the Designated Waste is delivered to a Designated Facility or other facility authorized by this Ordinance for Self-Hauler delivery, and is deemed by the County to be Acceptable Waste. Once deemed as Acceptable Waste, the County shall obtain all rights, title (ownership) and responsibilities with respect to the Designated Waste. The County shall not obtain all rights, title (ownership) and responsibilities with respect to Designated Waste where the County rejects delivered Waste as Unacceptable Waste. All Persons delivering Designated Waste will defend, indemnify and hold the County harmless from any and all claims of ownership brought against the County with respect to said Designated Waste which may affect the clear title of the County to said Designated Waste at the time of its acceptance by the County.

Except as otherwise agreed in writing with the County, nothing in this Section shall be construed as the County agreeing to indemnify or hold harmless Generators, Haulers, and Self-Haulers from any claims relating to the actions governed by this Designation Ordinance brought by any party under federal or state law, including but not limited to the Comprehensive Environmental Response, Compensation, and Liability Act; Hazardous Materials Transportation Act; Resource Conservation and Recovery Act; and Minnesota Environmental Response and Liability Act, each as amended

Section 11. DELIVERY OF DESIGNATED WASTE

All deliveries to the Designated Facilities shall be in accordance with the terms and conditions of the County's Solid Waste Ordinances and in compliance with delivery instructions and procedures set forth by the County or Designated Facility.

Subsection 11.1. Delivery of Unacceptable Waste. Each Person shall use its best efforts to deliver only Acceptable Waste to the Designated Facilities and will comply with the terms and conditions of Otter Tail County Ordinances and policies and procedures pertaining to the Designated Facility. The Hauler, Self-Hauler, or Generator shall be responsible for removal and proper disposal of Unacceptable Waste delivered or caused to be delivered by the Hauler, Self-Hauler, or Generator to a Designated Facility but not detected prior to delivery. All costs of such removal and disposal shall be borne by the Hauler, Self-Hauler, or Generator. Such removal shall be accomplished promptly after notice, verbal or written, is received by the Hauler, Self-Hauler, or Generator from the County or Authority that any Waste previously delivered is Unacceptable Waste. The County or Authority, at its option, may remove and dispose of the Unacceptable Waste and charge the costs of such removal and disposal and the cost of any necessary repair or decontamination of the Designated Facility to the Hauler, Self-Hauler, or Generator.

Subsection 11.2. Form of Acceptable Waste. All Designated Waste shall be in substantially the same form and consistency as when it came under the control of the Person transporting the waste except that such Designated Waste may be compacted when compaction is desirable for transportation. No person shall mix Acceptable Waste with Unacceptable Waste as a method of diverting Acceptable Waste from a Designated Facility or enabling the delivery of Unacceptable Waste to a Designated Facility. Waste generated within the Designated Area shall not be mixed with Waste generated outside the Designated Area, except as Hauler, Self-Hauler, or Generator has been given prior approval by the County to do so.

Subsection 11.3. Equipment. All equipment used by the Hauler, Self-Hauler or Generator for collection and transportation of Acceptable Waste pursuant to this Ordinance shall comply with such equipment specifications as may be established or amended from time to time by the County, the Authority, or other regulatory agencies. Waste delivered by equipment in violation of the aforementioned equipment specifications may be rejected by a Designated Facility. The Hauler, Self-Hauler or Generator shall supply the County information concerning the Hauler's, Self-Hauler's, or Generator's equipment as may be requested from time to time by the County.

Section 12. DUTY TO ACCEPT DESIGNATED WASTE; TEMPORARY INABILITY TO ACCEPT DESIGNATED WASTE

Notwithstanding anything in this Designation Ordinance to the contrary, the Designated Facilities will accept all Designated Waste to the extent required by applicable Minnesota Law. If at any time after the Effective Date the County is temporarily unable to receive all or any part of Designated Waste at a Designated Facility, the County shall notify Persons via notice at the Designated Facility. In such event, each Person shall be responsible for the transportation of the Designated Waste to another permitted waste management facility. However, for the duration of the temporary period when the County is unable to accept Designated Waste at one or more of the Designated Facilities, the County may direct Designated Waste to an alternate waste management

facility or as otherwise required by contract with the County. All costs of such transportation and disposal shall be borne by the Hauler, Self-Hauler, or Generator.

Section 13. DESIGNATION RECORDS; INSPECTION

Subsection 13.1. For the purposes of this section:

1. “Origin” means a general geographical description that at a minimum names the local governmental unit within Otter Tail County from which Designated Waste was collected; and
2. “Type” means a best estimate of the percentage of each truck load that consists of residential, commercial, industrial, construction, or any other general type of waste.

Subsection 13.2. Records; haulers; facilities. Each Person who collects Solid Waste including, but not limited to all Haulers and Self-Haulers, shall maintain records regarding the volume or weight, type, and origin of Waste collected or transported. Each day, a record of the origin, type, and weight of the Waste collected that day and the identity of the Waste facility at which that day’s collected Waste is deposited must be kept on the Waste collection vehicle. Global Positioning System (“GPS”) records may be used to assist in developing such information. If the Waste is measured by volume at the Waste facility at which it is deposited, the record may show the volume rather than the weight of the Waste.

The owner or operator of a Designated Facility shall maintain records regarding the weight of the Waste, or the volume of the Waste if the Waste is measured by volume; the general type or types of Waste; the origin of the Waste delivered; the date and time of delivery; and the name of the Hauler or Self-Hauler that delivered the Waste.

Subsection 13.3. Inspection. A Person authorized by Otter Tail County, anywhere in the State, may:

1. Upon presentation of identification and without a search warrant, inspect or copy the records required to be kept on a Waste collection vehicle under subdivision 13.2, above, and inspect the Waste on the vehicle at the time of deposit of the Waste at a facility;
2. When reasonable notice under the circumstances has been given, upon presentation of identification and without a search warrant, inspect or copy the records of an owner or operator of a Solid Waste facility that are required to be maintained under subdivision 13.2, above;
3. Request, in writing, copies of records of a Hauler or Self-Hauler that indicate the type, origin, and weight or, if applicable, the volume of Waste collected, the identity of the facility at which the Waste was deposited, and the date of deposit at the facility; and
4. Upon presentation of identification and without a search warrant, inspect or copy that portion of the records of a Hauler or Self-Hauler necessary to comply with

clause (3), above, at the central record-keeping location of the Hauler or Self-Hauler only if the hauler fails to provide copies of the records within 15 days of receipt of a written request for them, unless the time has been extended by agreement of the parties.

Records or information received, inspected, or copied by the County under this section may be classified as nonpublic data as defined in Minn. Stat. § 13.02, subd. 9, and may be used by the County solely for enforcement of this Ordinance. A Hauler, Self-Hauler, or the owner or operator of a Waste facility shall maintain records needed to comply with this section for two years, or as may be required by contract with the County.

Section 14. VIOLATIONS AND PENALTIES

Subsection 14.1. Criminal Enforcement.

- a) **Citations.** Any person who fails to comply with the provisions of this Designation Ordinance is guilty of a misdemeanor, and upon conviction thereof, shall be punished as provided by law. A separate offense shall be deemed committed upon each day during or on which a violation occurs or continues. The issuance, form and process associated with such citations shall follow the procedures set forth in Section 15 of the County's Solid Waste Ordinance.
- b) **Venue and Prosecution.** The Otter Tail County Attorney's Office shall have authority to prosecute violations of any provisions of this Designation Ordinance. Such prosecutions shall be venued in Otter Tail County District Court.

Subsection 14.2. Civil Enforcement; Venue.

- a) Otter Tail County may enforce this section by commencing an action in Otter Tail County District Court. The court may compel performance in any manner deemed appropriate by the court, including, but not limited to, issuance of an order to show cause, a temporary restraining order, or an injunction for a violation or threatened violation of this Designation Ordinance. In addition, the court may order payment of damages, including interest, or a civil penalty, or both. In an action brought to enforce this section in which the County substantially prevails, the court may order payment by the defendant of the costs of mitigating any damages caused by the violation, and other County costs and disbursements, including reasonable attorney fees.
- b) A Person who fails to comply with this Designation Ordinance is subject to penalties including, but not limited to, the following:
 1. An order to compel performance or to restrain or enjoin any activity that interferes with the requirements of this Designation Ordinance to keep records in Subsection 13.2, above, or the requirement to allow timely entry and inspection in Subsection 13.3 above;

2. Damages caused by the failure to keep records or by refusal to allow timely entry or inspection;
3. A civil penalty for failure to comply with the requirements of this Designation Ordinance payable to the County of up to \$10,000 per day for each day of violation; or
4. Any or all of the above.

Section 15. GENERAL TERMS

Subsection 15.1. Each Person's Mandatory Obligations. All obligations to make payments due to the County under this Designation Ordinance shall be absolute and unconditional. No Person shall be entitled to any abatement, diminution, setoff, abrogation, waiver or modification thereof, nor to any termination of this Designation Ordinance regardless of any rights of setoff, recoupment or counterclaim that each Person might otherwise have against the County or any other party or parties and regardless of any contingency, unforeseen circumstance, or event, except upon written approval by the County for good cause shown through submission of a written application and, at the County's option, attendance at an informal meeting. The County shall set forth its determination on the application in a written decision.

Subsection 15.2. Severability. It is hereby declared to be the intention of the Board of Commissioners of the County that the provisions of this Designation Ordinance are severable in accordance with the following:

- a) If any court of competent jurisdiction shall adjudge any provision of this Designation Ordinance to be invalid, such judgment shall not affect any other provisions of this Designation Ordinance not specifically included in said judgment.
- b) If any court of competent jurisdiction shall adjudge invalid the application of any provision of this Designation Ordinance to a particular structure, site, facility or operation, such judgment shall not affect the application of said provision to any other structure, site, facility or operation not specifically included in said judgment.

Subsection 15.3. Provisions Are Cumulative. The provisions in this Designation Ordinance are separate, distinct, and cumulative. Any additional limitations heretofore passed, or which may be passed hereafter, covering any subject matter in this Designation Ordinance, shall not affect any other provisions of this Designation Ordinance not specifically included in said limitations.

Subsection 15.4. No Consent. Nothing contained in this Designation Ordinance shall be deemed to be a consent, license, or permit to locate, construct or maintain a Solid Waste Management Facility, or to carry on any activity related to Solid Waste management.

Subsection 15.5. Non-Liability. Neither the County nor any officer or employee thereof shall be held liable for any damage to Persons or property by reason of any investigation, reinvestigation, failure to investigate, inspection, reinspection or failure to inspect, or by reason of the approval or disapproval of equipment or the granting, not granting, suspending or revoking of any license, nor

for any action in connection with the inspection or control of Designated Waste or in connection with any other official duties.

Subsection 15.6. Amendments. This Designation Ordinance may be amended pursuant to Minn. Stat. §115A.86, Subdivision 5.

Subsection 15.7. Rights and Duties of Authority. The County may assign rights, duties and responsibilities to enforce, comply with, or perform the requirements of this Designation Ordinance to the Authority as authorized by Minn. Stat. §471.59 and the Joint Powers Agreement.

Subsection 15.8. Publication. The Clerk shall cause this Designation Ordinance to be published and recorded as provided in Minn. Stat. §375.51 and Minn. Stat. §115A.86.

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