

Did the Kay County Commissioners Wayne Leven, Dee Schieber, Laile Wilson, Blackwell Chamber of Commerce Director Shane Fry, and Blackwell City Commissioner Brad Bechtel conspire together to regulate the Dilworth Development from putting in their landfill on private property, by implement regulations that did not exist?

Did Shane Fry and Brad Bechtel conspire with the Kay County Commissioners to enable themselves to contract their own landfill?

Edith Denton
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12-4-08
Date

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Blackwell, Oklahoma, 74631
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KAY COUNTY RURAL SOLID WASTE MANAGEMENT REGULATIONS

CHAPTER ONE

SECTION 1

PURPOSE - The purpose of these regulations is to establish criteria for municipal and industrial solid waste landfills in Kay County, Oklahoma.

These criteria are designed to ensure the protection of human health; the protection of the environment, including water resources, wildlife, historic sites, and endangered species; the protection of county citizen's financial well-being by assuring that the benefits and burdens of waste disposal are allocated equitably; and the protection of the rights of county citizens to make sitting decisions regarding major landfill projects affecting the quality of life within the county.

SECTION 2

A. APPLICABILITY - These regulations are adopted by Kay County, Oklahoma, a political subdivision of the State of Oklahoma pursuant to the authority granted in **27A O.S. § 2-10-101 et seq.** which statutes are adopted and incorporated herein by reference PROVIDED that in those instances wherein the regulations are more restrictive it is the intention of Kay County to adopt and enforce the more restrictive regulation.

B. These criteria apply to all owners and operators of municipal and industrial solid waste landfills, which commence receiving waste on or after the effective date of these regulations. Any existing and lawfully permitted landfill locations which have been receiving waste for more than one year prior to the adoption of these regulations do not come within the purview of these regulations.

C. No person covered by these rules may construct or operate a municipal

or industrial solid waste landfill in Kay County without a permit issued by the Commissioners of Kay County as well as a permit from the Oklahoma Department of Environmental Quality.

D. No permit modification shall be effective until the modification is made in both the State and County permits.

E. These regulations shall not apply to municipal landfills operated by any lawfully incorporated city or town located within the territorial confines of Kay County.

CHAPTER TWO

DEFINITIONS

A. **"Hazardous Wastes"** means solid wastes that are designated as hazardous or controlled industrial waste by either **the Oklahoma State Department of Health or the U.S. Environmental Protection Agency** as found **40 CFR 261 Subpart C and D**. Waste excluded from designation as "hazardous" or "controlled" industrial waste solely because of the volume exclusions in the **Oklahoma Controlled Industrial Waste Management Act** are also considered hazardous.

B. **"Non-hazardous Waste"** means solid waste generated by manufacturing or industrial processes that are not designated as controlled industrial waste by **the Oklahoma State Department of Health or the U.S. Environmental Protection Agency as found in Subtitle C of RCRA**. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes; Electric power generation; fertilizer/agricultural chemicals; food and related products/by-products; 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 may include but is not limited to sludge's from industrial waste water treatment facilities, Boiler ash generated from coal fired facilities, asbestos, fly ash from coal fired

plants, Solid Waste Incinerator ash. Foundry sand, food processing waste, petroleum contaminated soil, and other types of waste, such as laundry sludge, grinder rinse residue, washer rinse residue, neutralized depleting sludge, metal blast material, and ditch skimmer sludge, empty crushed chemical drums, wastewater screenings, and wastewater grit, pigmented plastic power coating, carbon black toner. Aluminum sulfate sludge, spent sand, waste paint residue, plasma spray sludge, trailer cleaning sludge, carbon black, and cooling tower wash residue.

C. **“Municipal wastes”** means any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

D. **“Special wastes”** means those wastes that require special handling for disposal at a landfill but are not from an industrial or manufacturing process. Special wastes include the following but are not limited to sludge’s, septic tank pumping, and grease trap waste, packinghouse offal and tankage, waste fats and oils, hatchery waste, cannery waste, and process residue and waste. If any, special wastes are to be landfilled in a landfill that is not currently permitted. Then the design requirements must be those for that type of landfill.

E. **“Commissioners”** means the Board of Commissioners of Kay County, Oklahoma.

F. **“Owner/Operator”** means the owner or operator of a municipal or industrial solid waste landfill.

G. **“Department”** as used in these regulations shall refer to the Oklahoma State Department of Health.

CHAPTER THREE

OPERATOR REQUIREMENTS

A. The operators of any permitted landfill must ensure that the concentration

of methane gas does not exceed 25 percent of the lower explosive limit for methane in facility structures (excluding gas control or recovery system components) or at the facility property boundary. Lower explosive limit means ~~the lowest percent by volume of a mixture of explosive gases in air that will~~ propagate a flame at 25 degrees C and atmospheric pressure.

B. Owners or operators must implement a routine monitoring program to ensure that the standards in A. above are met. Owners/operators shall report quarterly to Kay County the levels of explosive gases.

C. The Kay County Commissioners shall not issue any permits for the siting of a new municipal solid waste landfill that the County Commissioners, in consultation with the Oklahoma Department of Environmental Quality and any affected contiguous counties, determines will produce traffic and weight loads that the County roads and bridges are insufficient to handle. The applicant is responsible for improving the roads and bridges sufficient to carry the increased traffic and weight loads that are projected to result from the landfill before permit shall issue.

1. The County will perform or contract for any necessary road and bridge upgrades, needed in response to the landfill, with funds provided by the Owner/operator. The cost of any road and bridge upgrades shall be paid prior to commencement of road upgrading.

2. No additional traffic, weight or volume, or changed routes beyond those stipulated in the initial permit shall be allowed without the issuance of a modification to permit by the County Commissioners. To obtain such modifications the owner/operator must meet the following requirements.

a) Provide a detailed description of proposed changes;

b) Demonstrate to the satisfaction of the Commissioners that such changes will not be detrimental to the County and Pay the full cost of any road and bridge upgrading the County determines to be necessary prior to the issuance of the permit modification.

CHAPTER FOUR

LOCATION CRITERIA

- A. No landfill shall be permitted by the Board of Commissioners of Kay County, which is in conflict with one or more of the following location criteria:
1. A new commercial landfill disposal site shall not be located in Kay County if the proposed site is within twenty (25) miles of an existing commercial landfill disposal site permitted by the Oklahoma Department of Environmental Quality that accepts an average of the One Hundred (100) tons or greater of solid waste per day.
 2. Within three miles of a dwelling.
 3. Within six miles of a public school.
 4. Within three miles of water well currently being used for domestic consumption.
 5. Within five miles of an aquifer as designated by the Oklahoma Geological Survey.
 6. Within five miles of an endangered Species as defined by the most recent EPA list which the Chairman of the Biology Department of OSU University must certify.
 7. Within 2 miles of an airport as defined by an existing "sectional" issued by the Federal Aviation Agency.
 8. Within 5 miles of a public recreation area, natural preservation, or designated wildlife preservation

9. A solid waste landfill will not be located within 6 miles of a known epicenter of an earthquake of size more than 4.0 on the Richter Scale or as a #V as measured on the "Modified Mercalli" Scale or recorded by the Oklahoma Geological Survey.
10. Will not be located within 3 miles of a surface impoundment of water of size 2 acres or more.
11. Will not be located in a seismic impact zone. "Seismic impact zone" means an area with a ten (10) percent or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull (g) will exceed 0.05g in two hundred fifty (250) years.
12. Maximum horizontal acceleration in lithified earth material "means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a ninety (90) percent or greater probability that the acceleration will not be exceeded in two hundred fifty (250) years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment; and
13. "Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregated or massed of mineral or small particle of older rock that formed by crystallization of magma or by indurations of loose sediments. The term "lithified earth material" shall not include man-made material such as fill, concrete and asphalt.
14. Solid waste landfills shall not be located (permitted) in wetlands as designated by the United States Department of Agriculture and the EPA.
15. No solid waste landfill shall be located within the 100-year floodplain or flood fringe as determined by the U.S. Corp of Engineers.
16. No solid waste landfill shall be located in such a place to endanger any Class I or Class II ground water (as defined by EPA) as determined by

the County Commissioners.

17. The rules for the Well Head Protection Act (WHPA) shall include all private wells that are in use within one (1) mile of the solid waste disposal site.
18. Cannot be located in unstable areas that may threaten the integrity of the liner protection system.
19. Shall not be located upon highly erodeable lands (HEL) of any percentage.

CHAPTER FIVE

SUPPLEMENTAL/LANDFILL DESIGN CRITERIA

- A. All municipal and industrial waste landfills, regardless of the class of water being protected, must have the following type of composite liner and leachate collection system at a minimum.
 1. The composite liner must consist of:
 - a) An upper component that is a high density polyethylene (HOPE) liner that meets or exceeds the requirements set by the Oklahoma Department of Environmental Quality, and
 - b) A lower component of at least a four-foot layer of recompacted soil with a hydraulic conductivity of no more than 1×10^{-7} cm/sec. Soil comprising the line, shall have a liquid limit of no less than 20 percent and a plastic limit of no less than 10 percent, and at least 50 percent of said soils shall pass a 200-mesh sieve. The HOPE component must be installed in direct and uniform contact with the recompacted soil component.
 2. The leachate collection system shall be designed and constructed to maintain less than a 30 cm depth of leachate over the liner. No leachate lines or other structures may penetrate the liner in a vertical direction. Leachate transfer

lines may penetrate the liner in the horizontal direction only; the number must be kept to a minimum; and all such penetrations shall have an anti-seep collar placed around it and a minimum of 4 feet of re-compacted soil placed around the collar in all directions.

CHAPTER SIX

FEES FOR NON-HAZARDOUS INDUSTRIAL SOLID WASTE LANDFILLS

A. Pre-construction Fees.

The following fees must be paid at the times indicated prior to issuance of a construction permit for an industrial landfill.

1. Application fee. Must be paid to Kay County to cover engineering and scientific analyses expenses associated with evaluation of landfill application. All fees necessarily incurred by Kay County in the process of approval for a county permit must be paid in advance by the applicant to Kay County, these fees include but are not limited to administrative, engineering, geological, chemical, and/or scientific fees.

B. Operating Fee, The following fees must be paid at the times indicated:

Operating fees: the following fee must be paid at the time indicated. A \$10.00 per ton tipping fee must be paid to Kay County for all tons received at municipal and industrial landfills. Payment shall be made monthly. The \$10.00 fee shall escalate annually in accordance with the consumer price index upon approval by the Board of County Commissioners at a regularly scheduled meeting. Such fees shall be used to maintain an inspector on site, to cover additional inspection and laboratory fees as needed to control litter, to maintain common access roads, and to cover other necessary expenses related to the landfill.

CHAPTER SEVEN

PROCEDURES

1. The permit application must be accompanied by the application fee in cash or cashier's check as set out in 10A (1) and detailed engineering design documents. The design documents will also include a detailed description of the type of waste that will be accepted by the proposed landfill. Within a reasonable time following receipt of application, the design documents will be submitted to an independent consultant selected by the County to determine if the proposed landfill meets all local, state and Federal requirements, and will pose no threat to the environment, or residents, or livestock, either now or in the foreseeable future. If an initial review indicates that there is insufficient information to allow the Commissioners to assess whether the proposed landfill will meet the criteria of these regulations the application will be rejected at this time. The cost of the independent consultant will be borne by the applicant from the fee collected in Chapter IOA(I).
2. The County Commissioners will review the results of the study conducted by the independent consultant, and if satisfied that the design of the landfill is adequate, will notify the applicant to that effect.
3. Applicant shall pay the cost of the road and bridge upgrading and provide all other requirements of the road and bridge upgrading as set out in Chapter 7.
4. After the above requirements have been met, a landfill permit will be issued that specifies the types and volumes of waste that can be accepted at the landfill, the maximum volume or tonnage of waste that can be accepted, and the expiration date of the permit, after which no further dumping is permitted, and any other conditions the Commissioners deem necessary.
5. The landfill operator will be assessed, in advance. All fees must be paid when due. Failure to pay the required fees or to immediately correct deficiencies found by the inspectors will result in immediate closure.

CHAPTER EIGHT

FINANCIAL ASSURANCE FOR CLOSURE AND POST-CLOSURE CARE

Section A

Purpose, Scope and Applicability

1. This subpart provides a procedure by which an operator of a waste disposal site shall give "financial assurance" and that such operator post with the Kay County Commissioners a performance bond for the purpose of insuring closure of the site and post-closure care. The amount of the bond shall be Fifty Million Dollars (\$50,000,000.00).
2. Each operator must file a closure plan as part of a permit application. The operator of a disposal site must also file a post-closure care plan, which must be approved by the Kay County Commissioners. The operator of a disposal site must prepare a cost estimate of closure and post-closure care, and provide financial assurance in this amount. Financial assurance may be given through a Fifty Million Dollars (\$50,000,000.00) Bond guaranteeing payment and performance. The cost estimate and amount of financial assurance is to be updated at least on a biennial basis.
3. This Subpart applies only to the non-governmental operators of disposal sites.

Section B

Requirement to obtain financial Assurance

No person shall conduct a waste disposal operation, which requires a permit unless such person has provided financial assurance in accordance with this Subpart.

1. The financial assurance requirement does not apply to the State of Oklahoma, its agencies and institutions, or to any unit of local government;

provided, however, that any other persons who conduct such a waste disposal operation on a site which may be owned or operated by such a government entity must provide financial assurance for closure and post-closure care of the site.

2. Financial assurance is required of all sites, which, on or after this date, accepts waste for disposal.

Section C

Current Cost Estimate

The current cost estimate equals:

1. The operator must have a written estimate of the current cost of closing the site in accordance with the closure plan. The cost estimate shall be a condition of the permit.
2. The operator must revise the closure cost estimate whenever a change in the closure plan increases the closure cost estimate.
3. The closure cost estimate must be based on the steps necessary for the premature final closure of the site at the time during its intended operating life when the cost of closure will be greatest, or on the steps necessary for the final closure of the site at the end of its intended operating life, whichever is the most expensive.
4. Assumptions:
 - a) The closure cost estimate must be based on the assumption that the operator will contract with a third party to implement the closure plan.
 - b) The closure cost estimate may not be reduced by allowance for salvage value of equipment or waste, or for resale value of land.

5. The closure cost estimate must, at a minimum, include the following elements, if required in the site permit for closure of the site:

- a) The area that is to receive final cover;
- b) The source of the cover material;
- c) The cost of obtaining, moving and placing the cover material;
- d) The cost of final grading of the cover material;
- e) The cost of moving and placing topsoil on the final cover;
- f) The cost of fertilizing, seeding, and mulching and the cost of installation of gas control equipment.

Section D

Cost Estimate for Post-closure Care

A. The operator of a disposal site must have a written estimate of the annual cost of post-closure care regulations of this Part. The post-closure care cost estimate is calculated by multiplying the annual cost estimate by the number of years of post-closure care required by this Part. The post-closure care cost estimate shall be a condition of the permit.

B. Until the operator has issued a certificate of closure of the site, the operator must revise the post-closure care cost estimate whenever a change in the Post-closure care plan increases the cost estimate.

C. Assumptions:

1. The post-closure cost estimate must be based on the assumption that the

operator will contract with a third party to implement the post-closure care plan;

~~2. The post-closure cost estimate may not be reduced by allowance for salvage value of equipment or waste, or for resale value of land.~~

D. The post-closure care cost estimate must, at a minimum, include the following elements if required in the site permit for post-closure care of this site:

1. Number of years of post-closure care required
2. Groundwater monitoring
 - a) Number of monitoring points
 - b) Parameters to be monitored
 - c) Frequency of sampling
 - d) Cost per parameter per sampling
3. Cover stabilization
 - a) Estimate of the area that is expected annually to require residual settlement or erosion control work
 - b) Annual cost of residual settlement and erosion control

Section E

Bond Requirements

1. Any bond posted pursuant to these rules and regulations shall be either a

cash bond or posted by a corporation incorporated under the laws of the United States or of any state authorized to do business in this state and having power under the statutes of this state to execute and guarantee bonds and undertakings in judicial proceedings.

2. Said bond shall remain posted until 30 years after closure of the landfill.
3. In no event shall cancellation of a liability insurance policy or bond relieve the insurance company of liability for torts or damages "accrued prior to termination".

Section F

Insurance Requirements

1. Before operation or commencement of any landfill construction, the owner or operator thereof shall post a liability insurance policy in the amount of at least One-hundred million Dollars (\$100,000,000.00). This insurance must be written by an insurance company licensed to do business in the State or Oklahoma by the State Insurance Commission. This policy shall be for the purpose of reimbursing any person or property that is injured by the operation or said landfill. A current policy shall be on file with the Board of Kay County Commissioners which policy shall require notification of the County of cancellation of the policy. Notification of cancellation of the policy shall result in immediate closure of the facility.

Section G

Hauling Requirements

1. No person or corporation shall haul any material to said Landfill over any roads in Kay County unless said person or corporation has a permit issued by the Interstate Commerce Commission, which allows them to haul said cargo.

2. Any such hauler shall maintain any and all insurance as required by the Interstate Commerce Commission for the issuance of their permit.
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CHAPTER NINE

LANDFILL RULES

- A. No person, firm or corporation shall cause or allow the operation of a landfill or solid waste disposal facility within the territorial confines of Kay County unless each requirement of this Chapter is performed.
- B. Each person, firm or corporation shall obtain a permit from the Oklahoma State Department of Health for the type of disposal facility such entity seeks to operate.
- C. Each person, firm or corporation shall obtain a permit from the Board of Commissioners of Kay County, Oklahoma or its designated agent for the type of disposal facility such entity seeks to operate.
- D. All conditions and provisions of each such permit shall be complied with.
- E. Unless otherwise specifically provided by the permit, the following methods of operations shall be followed:
 1. **Unloading** - all refuse shall be deposited into the toe of the fill or into the bottom of the trench.
 2. **Spreading and Compacting** - as rapidly as refuse is deposited at the toe of the fill, all refuse shall be spread and compacted in layers within the cell, such layers not to exceed a depth of two feet.
 3. **Sufficient** - equipment, personnel and supervision shall be available at the site to ensure that operations comply with the permit.

4. **Cover Requirements** - Unless otherwise specifically provided by permit, the following cover requirements shall be followed:

a) **Daily Cover** - a compacted layer of at least 6 inches of suitable material shall be placed on all exposed refuse at the end of each day of operation.

b) **Intermediate Cover** - at the end of each day of operation, in all but the final lift of a landfill, a compacted layer of at least 12 inches of suitable material shall be placed on all surfaces of the landfill where no additional refuse will be deposited within 60 days.

c) **Final Cover** - a compacted layer of not less than two feet of suitable material shall be placed over the entire surface of each portion of the final lift not later than 60 days following the placement of refuse in the final lift, unless a different schedule has been authorized.

5. **Litter Requirements** - All litter shall be collected from the landfill site by the end of each working day and either placed in the fill and compacted and covered that day, or stored in a covered container.

6. **All litter shall be collected** - for two (2) miles in each direction of the outer edge of the landfill property at least three (3) times each week.

7. **Salvaging Requirements.**

a) All salvaging operations at a landfill site shall be conducted in a sanitary manner.

b) All salvaging operations at a landfill site shall be confined to an area remote from the operating face of the landfill.

c) Salvaging operations at a landfill site shall not interfere with, or otherwise delay the operation of the landfill.

d) All materials for salvaging shall be removed from the landfill site daily, or shall be separated by type and properly stored so as not to create a nuisance, vector harborage, or unsightly appearance.

8. **Scavenging** - no person shall cause or allow any scavenging operators at a landfill site.

9. **Animal Feeding** - no person shall cause or allow feeding of farm or domestic animals upon the site or a landfill, or with refuse delivered to a landfill site.

10. **Hot Waste** - except in an emergency, no person shall cause or allow the deposit at a landfill site of burning material. When such material is accepted, it shall be deposited at a specific location at the site designated by permit for such purpose, and the fire shall be immediately extinguished.

11. **Hazardous and liquid wastes** - hazardous wastes or liquid wastes and sludge's shall not be accepted at a sanitary landfill unless authorized by permit.

12. No person shall cause or allow open burning at a sanitary landfill site.

13. No person shall cause or allow operation of a landfill so as to cause or threaten or allow the discharge or emission of any contaminant into the environment of the County so as to cause or tend to cause air pollution in the County, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under these regulations.

14. No person shall cause or allow operation of a landfill so as to cause or threaten or allow the discharge of any contaminants into the environment in the County so as to cause or tend to cause water pollution in the County, either alone or in combination with matter from other sources. Or so as to violate regulations or standards adopted by the Board under these regulations.

15. Except as otherwise authorized in writing by the County, no person shall

cause or allow the development or operation of a sanitary landfill, which does not provide:

- ~~a) Adequate shelter, sanitary facilities and emergency communications for all employees;~~
- b) Roads adequate to allow orderly operations with the site;
- c) Fencing, gates or other measures to control access to site;
- d) Adequate measures for fire protection as approved by County;
- e) Adequate measures to monitor and control leachate;
- f.) Adequate measures to control dust and vectors;
- g) An operational safety program approved by the Agency;
- h) With respect to sanitary landfill sites for which permits are applied for following the effective date of these regulations provision for concealing sanitary landfill operations from public view.

CHAPTER TEN

SEVERABILITY

If any provision of these regulations or the application thereof to any person or in any circumstances is adjudged invalid such adjudication shall not affect the validity of these Regulations as a whole or any part thereof not adjudged invalid.

CHAPTER ELEVEN

TRANSFER of PERMITS

~~No permit is transferable from one permittee to another person or entity except~~
as approved by the Board of Commissioners of Kay County. The Board of Commissioners of Kay County shall approve a transfer of permit from one permittee to another person if the permittee and person are directly related as either parent and child or as husband and wife unless the Board of Commissioners determine that there is a compelling reason to deny the transfer between the above mentioned directly related individuals.

CHAPTER TWELVE

These regulations may be amended by a recommendation of two-thirds vote by the Board of Commissioners and approved by a majority of the voters in a special election called for that purpose of amending the regulations.

CHAPTER THIRTEEN

These regulations shall become effective immediately upon adoption by the Board of Commissioners of Kay County, Oklahoma.

Adopted this ____ day of _____, 2005

Attest:

County Clerk/Tammie Reese

Kay County District 1 Dee Schieber, Commissioner

Kay County District 2 Wayne Levens, Commissioner

Kay County District 3 Laile Wilson, Commissioner/Chairman

Commissioners

Wayne Leven
Laile Wilson
Dee Schieber
