

ORDINANCE 15 OF 2024

AN ORDINANCE OF AVOCA BOROUGH, LUZERNE COUNTY, ESTABLISHING HOST MUNICIPALITY BENEFIT FEES FOR EACH DISPOSAL FACILITY, MUNICIPAL WASTE LANDFILL, AND RESOURCE RECOVERY FACILITY

NOW THEREFORE, be it ordained as follows:

SECTION 1 – TITLE

This Ordinance shall be known as the Avoca Borough Host Municipality Benefit Fee Ordinance

SECTION 2 – PURPOSE

The purpose of this Ordinance is to implement the requirement of the host municipality benefit fee by establishing the rate and timing of the host municipality benefit fee payments; providing for collection and enforcement of the fee; require each operator required to pay the fee to keep records; permit the operators of disposal facilities, municipal waste landfills and resource recovery facilities subject to this fee to collect the fee as a surcharge, and establish penalties for the violation of this Ordinance.

SECTION 3 – DEFINITIONS

DISPOSAL - The incineration, deposition, injection, dumping, spilling, transferring, leaking or placing of solid waste into or on the land or water in a manner that the solid waste or a constituent of the solid waste enters the environment, is emitted into the air or is discharged to the waters of the commonwealth.

HAZARDOUS WASTE

- A. Any garbage, refuse, sludge from an industrial or other wastewater treatment plant, sludge from a water supply treatment plant or air pollution control facility and other discarded material, including solid, liquid, semisolid or contained gaseous material, resulting from municipal, commercial, industrial, institutional, mining or agricultural operations and from community activities, or any combination of the above, but does not include solid or dissolved material in domestic sewage or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880; 33 U.S.C. § 1342), or source, special nuclear or by-product material as defined by the United States Atomic Energy Act of 1954, as amended (68 Stat. 923; 42 U.S.C. § 2014), which, because of its quantity, concentration or physical, chemical or infectious characteristics, may:

- (1) Cause or significantly contribute to an increase in mortality or an increase in morbidity in either an individual or the total population.
- (2) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

B. The term "hazardous waste" shall not include coal refuse as defined in the Act of September 24, 1968 (P.L. 1040, No. 318), known as the "Coal Refuse Disposal Control Act" (52 P.S. § 30.51 et seq.). "Hazardous waste" shall not include treatment sludge from coal mine drainage treatment plants, disposal of which is being carried on pursuant to and in compliance with a valid permit issued pursuant to the Act of June 22, 1937 (P.L. 1987, No. 394) (35 P.S. § 691.1 et seq.), known as the "Clean Streams Law."

LANDFILL - Any facility that is designed, operated or maintained for the disposal of municipal, residual or hazardous waste, whether or not such facility possesses a permit from the Department under the "Solid Waste Management Act." The term shall not include any facility that is used exclusively for the disposal of construction/demolition waste or sludge from a sewage treatment plant or water supply treatment plant.

MUNICIPAL WASTE - Any garbage, refuse, industrial lunchroom or office waste and other material, including solid, liquid, semisolid or contained gaseous material, resulting from operation of residential, municipal, commercial or institutional establishments and from community activities and any sludge not meeting the definition of "residual or hazardous waste" hereunder from a municipal, commercial or institutional water supply treatment plant, wastewater treatment plant or air pollution control facility.

OPERATOR - A person engaged in the solid waste processing, transferring, or disposal. Where more than one person is engaged in a single operation, all persons shall be deemed jointly and severally responsible for compliance with the provisions of this article.

PERSON - Any individual, partnership, corporation, association, institution, cooperative enterprise, municipal authority, federal government or agency, state institution and agency (including, but not limited to, the Department of General Services and the State Public School Buildings Authority), or any other legal entity whatsoever which is recognized by law as the subject of rights and duties. In any provisions of this article prescribing a fine, imprisonment or penalty, or any combination of the foregoing, the term "person" shall include the officers and directors of any corporation or other legal entity having officers and directors.

RECYCLING FACILITY - A facility employing a technology that is a process that separates or classifies municipal waste and creates or recovers reusable materials that can be sold to or reused by a manufacturer as a substitute for or a supplement to virgin raw materials. The term "recycling facility" shall not mean transfer stations or landfills for solid waste, nor composting facilities or resource recovery facilities.

RESOURCE RECOVERY FACILITY - A processing facility that provides for the extraction and utilization of materials or energy from municipal waste that is generated off site, including, but not limited to, a facility that mechanically extracts materials from municipal waste, a combustion facility that converts the organic fraction of municipal waste to usable energy and any chemical and biological process that converts municipal waste into a fuel product. The term also includes any facility for the combustion of municipal waste that is generated off site, whether or not the facility is operated to recover energy. The term does not include:

- (1) Any composting facility;
- (2) Methane gas extraction from municipal waste landfill;
- (3) Any separation and collection center, drop off point or collection center for recycling or any source-separation or collection for composting leaf waste.
- (4) Any facility, including all units in the facility, with a total processing capacity of less than 50 tons per day.

SOLID WASTE – Any waste, including, but not limited to, municipal, residual or hazardous wastes, including solid, liquid, semisolid or contained gaseous materials. The term does not include coal, ash or drill cuttings.

TRANSFER STATION – A facility where solid waste or municipal waste is temporarily held and sorted before being transferred to a landfill or recycling facility.

SECTION 4 – FEES IMPOSED; AMOUNT; MUNICIPAL OPTIONS

- A. **Imposition of Fee.** There shall be imposed a host municipality fee upon the operator of each commercial hazardous waste treatment, disposal facility, or transfer station and upon the operator of each municipal waste landfill or resource recovery facility that are located in the Borough of Avoca.
- B. **Amount.** The fee shall be one dollar (\$1.00) per ton of weighted solid waste or one dollar (\$1.00) per three (3) cubic yards of volume measured solid waste for all solid waste received at a landfill or facility. Any amounts paid by an operator to the Borough of Avoca as a host municipality pursuant to a pre-existing agreement shall serve as a credit against the fee imposed by this Ordinance.
- C. **Reservation of Municipal Option.** Nothing in this Ordinance shall prevent the Borough of Avoca from receiving a higher fee or receiving a fee in a different form at different times than provided by existing statute, if the Borough of Avoca and the operator of the disposal facility so agree in writing.

SECTION 5 – FORM AND TIMING OF PAYMENTS

- A. **Quarterly Payments.** Each operator subject to the payment of this fee shall make the host municipality benefit fee payment quarterly. The fee shall be paid on or before April 12, July 12, October 12 and January 12 for the three months ending the last day of March, June, September and December.

- B. **Quarterly Reports.** Each host municipality benefit payment shall be accompanied by a form prepared and furnished by the Department of Environmental Protection of the Commonwealth of Pennsylvania and/or its authorized representatives. The form shall state the weight or volume of the hazardous waste and solid waste received by the facility during the payment period and provide any other information deemed necessary by the Department of Environmental Protection to carry out the purpose of this Ordinance. The form shall be signed by the operator. A copy of the form shall be sent to the Department of Environmental Protection at the same time that the fee and form are sent to the Borough Avoca.
- C. **Timeliness of Payment.** An operator shall be deemed to have made payment of the host municipality benefit fee if all of the following are met:
- (1) The enclosed payment is for the full amount owed for the period involved.
 - (2) The payment is accompanied by the required form, and such form is complete and accurate.
 - (3) The letter transmitting the payment that is received by the host municipality is postmarked by the United States Postal Service on or prior to the final day on which the payment is to be received.
- D. **Discount.** Any operator that makes a timely payment of the host municipality benefit fee as provided in this section shall be entitled to a credit and shall apply against the fee payable by him a discount of 1% of the amount of the fee collected by him.
- E. **Alternative Proof.** For purposes of this section, presentation of a receipt indicating that the payment was mailed by registered or certified mail on or before the due date shall be evidence of timely payment.

SECTION 6 – COLLECTION AND ENFORCEMENT OF FEE

- A. **Interest.** If an operator fails to make timely payment of the host municipality benefit fee, the operator shall pay interest on the unpaid amount due at the rate established pursuant to Section 806 of the Act of April 9, 1929 (P.L. 343, No. 176), known as the "Fiscal Code" (72 P.S. § 806), from the last day for timely payment to the date paid.
- B. **Additional Penalty.** In addition to the interest provided in Subsection A, if an operator fails to make timely payment of the host municipality benefit fee, there shall be added to the amount of the fee actually due 5% of the amount of such fee, if the failure to file a timely payment is not more than one month, with an additional 5% for each additional month, or fraction thereof, during the time period which such failure continues, not to exceed 25% in the aggregate.

- C. **Assessment Notices.** If the Borough of Avoca determines that any operator of a municipal waste landfill or resource recovery facility or a hazardous waste treatment or disposal facility has not made a timely payment of the host municipality benefit fee, it shall send a written notice for the amount of the deficiency to such operator within 30 days from the date of determining such deficiency. When the operator has not provided a complete and accurate statement of the weight or volume of either the hazardous waste received or the solid waste received at the said facility for the payment period, the host municipality may estimate the weight or volume in its deficiency notice.
- D. **Constructive Trust.** All host municipality benefit fees collected by an operator and held by such operator prior to payment to the Borough of Avoca shall constitute a trust fund for the Borough of Avoca, and such trust shall be enforceable against such operator, its representatives, its officers and directors and any other person receiving any part of such fund, either without consideration or with knowledge that the operator is committing a breach of the trust. However, any person receiving a payment of lawful obligation of the operator from such trust fund shall be presumed to have received the same in good faith and without any knowledge of the breach of trust.
- E. **Manner of Collection.** All fees, interest and penalties and any other assessments shall be collectible in any manner provided by law for the collection of debts. If the person liable to pay any such amount neglects or refuses to pay the same after demand, the amount, together with interest and any costs that may accrue, shall be a judgment in favor of the Borough of Avoca, upon the property of such person, but only after same has been entered and docketed of record by the Prothonotary of Luzerne County. The Borough of Avoca may, at any time, transmit to the prothonotaries of the respective counties of the Commonwealth of Pennsylvania, or any clerk or court of any state or jurisdiction, certified copies of all such judgments, and it shall be the duty of each prothonotary to enter and docket the same of record in his office, and to index the same as judgments are indexed, without requiring the payment of costs as a condition precedent to the entry thereof.
- F. **Remedies Cumulative.** The remedies provided to the Borough of Avoca in this subsection are in addition to any other remedies provided at law or in equity.

SECTION 7 – RECORDS

Each operator that is required to pay the fee imposed by this Ordinance shall keep daily records of all deliveries of solid waste to the landfill, facility, transfer station, or resource recovery facility, including, but not limited to, the name and address of the hauler, the source of the waste, the kind of waste received, and the weight or volume of the waste. Such records shall be maintained within the Commonwealth of Pennsylvania by the

operator for no less than five (5) years, and shall be available to the Borough of Avoca for inspection upon request.

SECTION 8 – REPEALER

Any past ordinance, or part or parts thereof, conflicting with any part or parts of this Ordinance are hereby repealed to the extent that they are inconsistent herewith. In all other respects, the Ordinances of the Borough of Avoca shall remain as previously enacted and ordained.

SECTION 9 – SEVERABILITY

The provisions of this Ordinance are severable. If any section, sentence, clause, phrase of this Ordinance shall be held illegal, invalid, unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions of this Ordinance.

It is hereby declared as the intent of the Borough that this Ordinance would have been adopted had such invalid or unconstitutional section, sentence, clause, or phrase not been included. Furthermore, it is the intent of this Ordinance to be supplementary to, and not contrary to, any laws of the Commonwealth of Pennsylvania or regulations of any of its executive agencies.

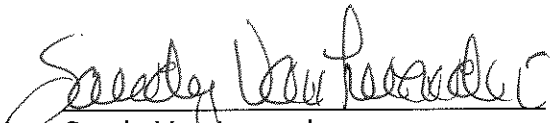
SECTION 10 – EFFECTIVE DATE

This Ordinance shall become effective immediately upon enactment as provided by law.

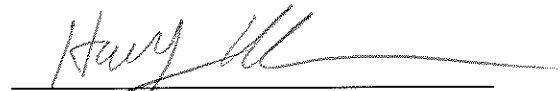
PASSED and ENACTED on this 10th day of October, 2024, at the regular meeting of the Avoca Borough Council.

ATTEST:

AVOCA BOROUGH COUNCIL

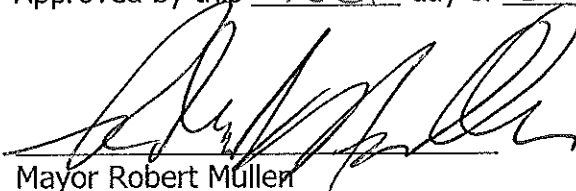


Sandy Van Luvender
Borough Manager/Secretary



Holly Homscheck
President, Avoca Borough Council

Approved by this 10th day of October, 2024.



Mayor Robert Muller