

## Chapter 164: SOLID WASTE

[HISTORY: Adopted by the Town Board of the Town of Berne 8-12-1992 by L.L. No. 1-1992. Amendments noted where applicable.]

### GENERAL REFERENCES

Mass public assemblies — See Ch. 79.  
Peddling and soliciting — See Ch. 138.  
Sewers — See Ch. 153.

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## ARTICLE I Solid Waste Facilities

### § 164-1. Definitions.

As used in this chapter, the following terms shall have these meanings ascribed to them:

**BROWN GOODS** — Electronic equipment containing circuit boards and transistors, such as radios, stereos, televisions and computer components. Editor's Note: Added at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

**BULKY WASTE** — Large items of refuse, including but not limited to furniture, auto parts and appliances such as washers, dryers, refrigerators, television sets, water heaters, mattresses, springs, logs and tree stumps.

**COMMERCIAL WASTE COLLECTOR** — Any person who, as a business enterprise, collects residential or commercial solid waste, from more than one household or any business or commercial establishment or industrial facility within the Town or otherwise transports or disposes of solid wastes collected from said sources or who performs any of these services for a fee.

**CONSTRUCTION AND DEMOLITION DEBRIS** — Uncontaminated wastes resulting from construction, remodeling, repair and demolition of structures. These wastes shall include but not be limited to concrete, asphalt, stone, brick, block, wood, plaster, nonasbestos shingles and insulation, roofing materials and metals, plumbing fixtures, electrical wiring, but shall not include any hazardous wastes or any of said listed materials which contain, include or have been tainted or affected by toxic, hazardous or otherwise harmful elements, chemicals or materials.

**GARBAGE** — Putrescible animal or vegetable waste resulting from the handling, storage, sale, preparation, cooking or serving of food.

**HAZARDOUS WASTE** — Any waste or combination of wastes which because of its quantity, concentration or physical, chemical or biological characteristics possesses a substantial present or potential hazard to human or animal health or to the environment as determined by the Town Board or the Department of Environmental Conservation. Such waste shall include but not be limited to wastes which are bioconcentrative, highly flammable, explosive, highly reactive, toxic or poisonous, irritating, sensitizing, corrosive or infectious and shall include wastes that are solid, semisolid, liquid or gaseous. The final determination of whether or not a waste is hazardous shall be made by the Town Board and shall not be limited to those items or materials defined as hazardous by state and federal law, rule or regulation.

**HOUSEHOLD HAZARDOUS WASTE** — Household waste which, but for its point of generation, would be hazardous waste as defined by this chapter, including pesticides as defined in the New York State Environmental Conservation Law.

**INDUSTRIAL WASTE** — Solid waste generated by mining, manufacturing, or industrial processes. Such waste may include but is not limited to, the following manufacturing processes: electric power generation; fertilizer/agricultural chemicals; inorganic chemicals; leather and leather products; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, clay and concrete products; textiles; transportation equipment; and water treatment.

**PERSON** — Any individual, firm, partnership, company, corporation, association, joint venture, cooperative enterprise, trust, municipality, government agency, societies, clubs, fraternal orders and any other entity or group of persons which is capable of being sued. In any provisions of this chapter prescribing penalties for noncompliance, the term "person" shall include the officers, directors, partners, managers, or persons in charge of a company, corporation, or other legal entity having officers, directors, partners, managers or other persons in charge.

**RESIDENT** — Any person owning property or living on property located in the Town of Berne.

**RUBBISH** — Any one or more of the following: combustibles, including, but not limited to, paper, cartons, boxes, barrels, wood, wood furniture and bedding; noncombustibles, including, but not limited to, metal, tin cans, metal furniture, small quantities of rock, concrete, glass, crockery, and other metal fixtures.

**SOLID WASTE** — All putrescible and nonputrescible materials or substances, that are discarded or rejected as being spent, useless, worthless or in excess to the owners at the time of such discard or rejection, including, but not limited to, garbage, refuse, industrial and commercial waste, sludges from water treatment facilities, rubbish, tires, ashes, fuel and gaseous

material containers, incinerator residue, construction and demolition debris and offal. The term shall not include solid or dissolved matter in domestic sewage or substances, materials in noncontainerized gaseous form, or other such items or materials excluded from the definition of solid waste pursuant to the regulations of the State of New York, Department of Environmental Conservation.

**SOLID WASTE FACILITY** — Any facility within the Town distinguished as a depository, holding or transfer point for solid wastes, including but not limited to sanitary landfills, transfer stations, recycling facilities, construction and demolition debris landfills, materials recovery facilities that are or shall be designated as such by any law, rule or regulation of the Town. This term shall also include those dumps or dumping grounds or approved waste excavation material disposal sites referred to in Article I of this chapter.

**TOWN** — The Town of Berne.

**WASTE EXCAVATION MATERIAL** — Uncontaminated earth, sand, dirt and soil.

**YARD AND GARDEN WASTE** — Any one or more of the following: tree branches, tree trunks, tree stumps, yard trimmings, leaves and garden waste.

#### **§ 164-2. Operation of solid waste facilities.**

- A. No land within the Town shall be used for the discharge, charge, disposal, deposit or burial of rubbish, garbage or solid wastes as defined in this chapter, unless the land is operated as a solid waste facility or transfer station by or on behalf of the Town or operated pursuant to a permit issued for said purposes by the Town and operated in accordance with all applicable laws, rules and regulations of the State of New York, County of Albany and Town.
- B. No person shall receive or accept for disposal or deliver, dump, or offer for disposal any garbage, refuse or recyclable material on any land or at any location, site or area in the Town except:
  - (1) Upon premises established, operated or maintained by the Town as a solid waste facility subject to all rules, regulations and restrictions governing the use of such premises; and
  - (2) Upon premises authorized for sanitary landfill dumping under this chapter.

#### **§ 164-3. Dumping of waste excavation material.**

Waste excavation material of any kind shall not be discharged, disposed of, deposited or buried within the Town unless said material is clean and uncontaminated.

#### **§ 164-4. Prohibited disposal.**

- A. No person shall intentionally burn hazardous waste, batteries, garbage, plastics or plastic-laminated materials, furniture, bedding, asphalt materials, epoxy-resins including fiberglass, electrical wiring, white and brown goods, tires, offal, packing foam, styrofoam, cloth or magazines.
- B. No person shall throw, deposit or bury hazardous waste, batteries, plastics or plastic-laminated materials, furniture, bedding, epoxy-resins including fiberglass, white and brown goods, tires, packing foam, styrofoam or magazines.
- C. No person shall throw or deposit any garbage, rubbish, yard and garden waste or solid waste in or upon any street, highway, walk, park, parking area or other public place within the Town, except in public receptacles; provided that no items listed above shall at any time be thrown or deposited in public receptacles unless such receptacles are specifically designated and marked for the reception of such materials.
- D. No person shall throw or deposit any garbage, rubbish, yard and garden waste, solid waste or foreign matter of any kind whatsoever in any pool, pond, river, lake, stream, culvert, reservoir, or its tributaries or watershed, or any body of water in a park or elsewhere within the Town. This provision shall not prohibit authorized treatment of pools or bodies of water to control or regulate water purity or aquatic vegetation by persons having all required permits issued by state, county, Town or watershed authorities having jurisdiction over such treatment.

#### **§ 164-5. Authority to establish solid waste facilities.**

This article shall not prohibit the establishment or operation by the Town of solid waste facilities as the necessity therefor may arise nor shall it prohibit the Town from authorizing, for good cause shown, the discharge, disposal, deposit or burial of waste excavation material at a particular site located within the Town.

#### **§ 164-6. Penalties for offenses.**

- A. A violation of this article is hereby declared to be an offense punishable by a fine of not less than \$50 or more than \$2,500, or imprisonment for up to 15 days, or both.

- B. Each day the violation continues shall be deemed a separate and distinct violation.
- C. The Town may pursue any other action authorized by law.

#### **§ 164-7. Exclusions.**

The provisions of this article shall not apply to any department of the Town providing leaf and trash pickup or highway maintenance within the Town.

#### **§ 164-8. Permits for disposal of solid waste.**

Notwithstanding the provisions of this article, the Town Board may, upon good cause, grant permits for disposal of solid waste and/or the operation of a solid waste facility and/or authorizing the disposal of waste excavation material within the Town, on such terms and conditions which seem necessary or desirable to the Town Board, including, but not limited to, compliance with Articles II and/or III of this chapter, and also the posting of such security or liability insurance as the Town shall deem necessary.

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## **ARTICLE II Solid Waste Management**

#### **§ 164-9. Legislative intent.**

The Town Board of the Town, by enacting this chapter, hereby declares its intent and purpose to be the protection of the general health, safety and welfare of the residents of the Town by providing a clean, wholesome and attractive environment within the Town. The Town Board also recognizes the inherent dangers arising from the unrestricted or unsafe generation, collection or disposal of solid wastes or other dangerous, noxious, unhealthy and hazardous substances. The Town Board hereby adopts the following requirements concerning the collection, transportation, disposal and management of solid waste within the Town.

#### **§ 164-10. Regulations.**

- A. Only solid wastes generated and collected within the Town and which are not otherwise prohibited will be accepted at any solid waste facility within the Town or at any solid waste facility authorized pursuant to Article I of this chapter.
- B. The Town may contract with another municipality or person to accept solid waste, and such waste may be accepted at a solid waste facility within the Town in accordance with such a contract.
- C. All persons who collect, transport or dispose of solid wastes in the Town must obtain a permit for such purposes from the Town in addition to such other permits or approvals that may be required by law, rule or regulation of the State of New York, County of Albany, Town or other governmental entity.
- D. Any person discharging solid waste at any solid waste facility within the Town shall possess a valid permit.
- E. Any person entering or utilizing a solid waste facility shall adhere to the rules and regulations of said facility as well as all other laws, ordinances, rules or regulations of the State of New York, County of Albany, Town, or other governmental entity with regard to the collection, transportation or disposal of solid waste, and must follow the instructions of the Town Board.
- F. Resident access to any public solid waste facility shall be limited to those times posted when authorized personnel are on duty. Items may be left at the site only during the scheduled hours of operation. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).
- G. No person shall throw, dump, deposit or place in their rubbish or garbage for collection, nor shall any person throw, dump, deposit or place in any solid waste facility, any item or items designated by the Town as recyclable material, except in accordance with this chapter or the rules and regulations thereof.
- H. All vehicles collecting solid waste shall be properly and adequately equipped to contain and carry the materials collected without effluent therefrom spilling onto public streets, highways and other places in violation of Article 1, § 164-4 of this chapter.
- I. The Town Board may establish additional or further rules, requirements and procedures concerning the collection, transportation or disposal of solid waste within the Town.

#### **§ 164-11. Prohibited materials.**

Disposal of any of the following materials at any solid waste facility within the Town is prohibited:

- A. Toxic, industrial or hazardous wastes, except household hazardous waste.
- B. Dead animals and carcasses, including rendering products, hides, fleshings and residues from meat processing.

- C. Motorized vehicles, trailers and equipment which are not in a clean and dismantled state.
- D. Solid waste generated or collected outside the Town or collected by a commercial waste collector within the Town. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).
- E. Any other materials or waste, hazardous or not, which the Town Board finds would require special handling and disposal.

#### § 164-12. Solid waste permits.

Permits for the use of solid waste facilities and/or for the collection, transportation or disposal of solid waste within the Town must be obtained.

##### A. Residents.

- (1) Permits allowing use of Town solid waste facilities shall be obtained by providing written proof of residence or property ownership within the Town. Such permits shall be valid for the disposal of solid waste generated within the Town by the permit holder and his/her immediate household.
- (2) Each applicant for a permit required by this article shall make an application in writing on a form provided by the Town to the Town Clerk. Attendants at the solid waste facility may deny the use of said premises to any person failing to exhibit such permit or proof of permit.
- (3) Any permit issued under this subsection shall become void when the holder ceases to be a resident of the Town. A permit is not transferable.

B. Commercial waste collectors. Commercial waste collectors are not permitted to use Town solid waste facilities or to dispose of solid waste generated either outside or inside the Town. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

C. Denial of application. Notwithstanding any other provision of this article, a permit required by this article shall not be granted where, in the opinion of the Town Board, the granting thereof will cause or may be deemed likely to cause an undue burden on the disposal facilities of such solid waste facility or may otherwise interfere with the orderly operation and maintenance of the solid waste facility or the health and safety of persons or property.

#### § 164-13. Fees for residents. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

The Town Board may adopt a schedule of fees for the disposal of designated portions of the solid waste stream.

#### § 164-14. Administration.

The Town Board may:

- A. Establish the days and hours of operation of all facilities.
- B. Establish rules and regulations governing the operation, maintenance and use of all solid waste facilities in the Town and the collection, transportation or disposal of solid wastes within the Town, and provide for enforcement of this article and the rules and regulations thereunder.
- C. Suspend any permit pending a hearing for revocation pursuant to § 164-15. Said suspension shall not exceed a period of 30 days. A permit may be temporarily suspended in the event that the Town Board determines that the holder of said permit is in violation of this article and said violation constitutes, or may create, a danger to the aesthetics and environment of the Town or the health and safety of its inhabitants and its livestock and wildlife, or that a person is utilizing said permit for a purpose or in a manner that is inconsistent with this article or is allowing said permit to be utilized by a person other than the issuee of said permit.

#### § 164-15. Penalties for offenses.

A violation of this article or the rules and regulations thereunder is hereby declared to be an offense.

##### A. Residents and nonresidents.

- (1) A first violation shall be punishable by a fine of not less than \$50 or more than \$100.
- (2) A second violation within three years shall be punishable by a fine of not less than \$100 or more than \$500.
- (3) A third or subsequent violation within three years shall be punishable by a fine of not less than \$250 or more than \$1,000 or by up to five days' imprisonment, or both.

##### B. Commercial waste collectors.

- (1) A first violation shall be punishable by a fine of not less than \$100 or more than \$250.
- (2) A second violation within five years shall be punishable by a fine of not less than \$250 or more than \$1,000.
- (3) A third or subsequent violation within five years shall be punishable by a fine of not less than \$1,000 or more than \$2,500 or by up to five days' imprisonment, or both.

C. Additional penalties.

- (1) At any time, after a hearing, the Town Board may suspend or revoke any permit if the Town Board at such hearing determines the holder of such permit to be a persistent violator or incapable of or unwilling to comply with the provisions of this article or the rules and regulations thereunder, or has intentionally or negligently acted, or has acted and as a result has harmed, or created a risk of harm, to the aesthetics and environment of the Town or the health and safety of its inhabitants and its livestock and wildlife, or has utilized said permit in a manner inconsistent with this article or has allowed said permit to be utilized by other than its issuee. The permittee shall have an opportunity to be heard at such hearing, which shall be held after such permittee shall be served by written notice of such hearing in person or by certified mail, return receipt requested, not less than 15 days prior to the date of such hearing.
- (2) The Town shall also have such other remedies as are provided by law.

## ARTICLE III Mandatory Recycling

### § 164-16. Legislative intent.

- A. It is the goal of the Town of Berne to facilitate the disposal of solid waste generated within the Town in an economical and environmentally accepted manner and to reduce the total per capita amount of solid waste disposed of in the Town, in conformance with the New York State Solid Waste Management Plan, so that landfill space is saved, waste disposal problems are reduced, and precious natural resources are conserved.
- B. It is the purpose of this article to establish a source separation and recyclables collection program within the Town to reach the goal of the most feasible reuse and recycling of the Town's waste stream considering costs, per capita generation, marketability of recyclables, and public involvement.
- C. Recycling is a challenge to our residents, one to be learned and improved upon. Education, participation and cooperation are the elements of a successful recycling program, which shall be accomplished by a working partnership between the Town and its residents for the long-lasting benefit of all.

### § 164-17. Definitions.

For purposes of this article those terms defined in § 164-1 of this chapter shall have the meanings indicated therein unless a different meaning or context is set forth or required in this article. The following additional terms shall have the meanings indicated:

- BATTERIES, DRY-CELL** — Household batteries for flashlights, watches, toys, penlights, calculators, hearing aids, etc.
- BATTERIES, LEAD-ACID** — A cell or group of cells which provides electric current, such as automobile batteries.
- BIODEGRADABLES** — That segment of the solid waste stream which, under controlled conditions, can be biologically decomposed into a humus product that may be used as a soil amendment or mulch. Editor's Note: The definition of "brown goods," which immediately followed this definition, was repealed at time of adoption of Code (see Ch. 1, General Provisions, Art. I). See now § 164-1.
- CARDBOARD, CORRUGATED** — All corrugated cardboard normally used for packing, mailing, shipping or containerizing goods. This excludes paperboard cardboard and all items which have been coated with wax, plastic, foil or styrofoam.
- CARDBOARD, PAPERBOARD** — All cardboard used in packaging of foods, personal care and clothing items, such as cereal or shoe boxes. This excludes corrugated cardboard and all items which have been coated with wax, plastic, foil or styrofoam.
- CLOTH and CLOTHING** — Textiles woven of natural or synthetic fibers, and the garments made of these materials.
- COMPOSTING** — Controlled biological decomposition of organic waste materials into a humus product that may be used as a soil amendment or mulch.
- GLASS CONTAINERS** — Clear, green and amber (brown) glass jars, bottles and containers with lids, caps and closures removed.
- MAGAZINES** — Booklets or stapled catalogs made of slick and/or glossy paper. This excludes bound catalogs and telephone books.
- METAL CANS** — Tin, aluminum or other ferrous or nonferrous or composite cans and containers.

**MOTOR OIL** — Any petroleum-based lubricant used in internal combustion engines.

**NEWSPAPERS** — Newsprint and all newspapers and newspaper advertisements, supplements, comics and enclosures.

**PAPER** — All bond paper, including computer paper, stationery, photocopy and ledger-free commercial waste paper, junk mail, school paper, or other paper as designated by the Town Board; shall not include soiled paper or cardboard, wax paper, plastic or foil-coated paper, styrofoam, wax-coated food and beverage containers, carbon paper, or blueprint paper.

**PLASTIC CONTAINERS** — Containers composed of high-density polyethylene, polyethylene terephthalate or other plastics as designated by the Town Board.

**RECYCLABLE MATERIALS** — Those materials specified by the Town, or the State of New York, by law, ordinance, rule or regulation, which are to be separated from the waste stream and held for reuse or which have, or may have in the future, market or other value. These materials shall include, but not be limited to, glass containers, plastic containers, corrugated cardboard, paperboard cardboard, newspapers, metal cans, paper, magazines, cloth and clothing, telephone books, vehicle tires and casings, batteries, white goods, brown goods and scrap metal, and biodegradable materials as herein defined.

**SCRAP METAL** — Uncontaminated and oil-free ferrous and nonferrous metal items such as machinery parts and sheet metal.

**TELEPHONE BOOKS** — Telephone books and heavy-bound catalogs printed on nonglossy paper.

**VEHICLE TIRES AND CASINGS** — Tires or casings used on any self-propelled vehicle or on any vehicle intended to be towed by a self-propelled vehicle.

**WHITE GOODS** — Household appliances such as stoves and refrigerators.

#### **§ 164-18. Designation or limitation of recyclable materials.**

The Town Board, by way of regulation, may designate, add or delete items or materials which must be separated pursuant to this article. Public notification by posted notices, flyers and/or publication in the official Town newspaper is required 30 days prior to the date of application of the additional requirement.

#### **§ 164-19. Responsibility for separating recyclables.**

- A. It shall be the responsibility of all residents to separate recyclable and all other designated materials from all other solid waste and prepare them for reuse, recycling, or proper disposal in accordance with the rules established by the Town Board.  
Editor's Note: The paragraph regarding commercial waste collectors, which immediately followed this subsection, was deleted at time of adoption of Code (see Ch. 1, General Provisions, Art. I).
- B. Solid waste will not be accepted by the Town solid waste facility if it contains recyclable or other designated materials which are mixed or commingled with other solid waste.

#### **§ 164-20. Ownership of recyclables.**

- A. From the time of placement of recyclable materials at the solid waste facility by a resident, all such recyclable materials shall become the property of the Town. Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. I).
- B. It shall be a violation for any person without authority from the Town or its authorized agent to collect, pick up, remove from the solid waste facility, or cause to be collected, picked up or removed from the solid waste facility, any recyclable materials.

#### **§ 164-21. Composting.**

Nothing in this article shall be construed to prevent composting or mulching for agricultural, horticultural, silvicultural, gardening or landscaping purposes.

#### **§ 164-22. Administration.**

The Town Board shall be responsible for administering the mandatory recycling requirements of the Town and for the issuance of rules or regulations implementing this article and for the enforcement of any violations of this article or the rules and regulations issued thereunder.

#### **§ 164-23. Prohibited activities.**

It shall be a violation for any person:

- A. Other than those persons so authorized, to collect any designated recyclable materials which have been placed at the roadside for collection or within a solid waste facility recycling collection area pursuant to this article.

- B. To place or cause to be placed any material other than designated recyclable materials in or near a solid waste facility recycling collection area.
- C. To fail to follow the rules and regulations made up pursuant to this article.
- D. To fail to follow the directions of solid waste facility personnel or posted instructions regarding the placement of recyclable materials and other solid waste. Editor's Note: Former § 01-26, Disposal of recyclable materials by commercial waste collectors, which immediately followed this subsection, was deleted at time of adoption of Code (see Ch. 1, General Provisions, Art. I).

#### **§ 164-24. Enforcement.**

- A. Town solid waste facility personnel are hereby authorized to inspect incoming loads of solid waste to determine if unseparated recyclable materials are contained therein.
- B. Town solid waste facility personnel are hereby authorized to turn away and deny access to any person delivering a load that contains unseparated recyclable materials.
- C. Town solid waste facility personnel are hereby authorized to turn away any person who is not following the requirements of this chapter or the rules and regulations thereunder or who is failing to deposit recyclable materials or other solid waste in designated areas or containers.

#### **§ 164-25. Penalties for offenses.**

A violation of this article or the rules and regulations thereunder is hereby declared to be an offense.

- A. Residents and nonresidents.
  - (1) A first violation shall be punishable by a fine of not less than \$50 or more than \$100.
  - (2) A second violation within three years shall be punishable by a fine of not less than \$100 or more than \$500.
  - (3) A third or subsequent violation within three years shall be punishable by a fine of not less than \$250 or more than \$1,000 or by up to five days' imprisonment, or both. Editor's Note: Former § 01-28B, regarding penalties for commercial waste collectors, which immediately followed this subsection, was deleted at time of adoption of Code (see Ch. 1, General Provisions, Art. I).
- B. Additional penalties.
  - (1) At any time, after a hearing, the Town Board may suspend or revoke any permit if the Town Board at such hearing determines the holder of such permit to be a persistent violator or incapable of or unwilling to comply with the provisions of this article or the rules and regulations thereunder, or has intentionally or negligently acted, or has acted and as a result has harmed, or created a risk of harm, to the aesthetics and environment of the Town or the health and safety of its inhabitants and its livestock and wildlife, or has utilized said permit in a manner inconsistent with this article or has allowed said permit to be utilized by other than its issuee. The permittee shall have an opportunity to be heard at such hearing, which shall be held after such permittee shall be served by written notice of such hearing in person or by certified mail, return receipt requested, not less than 15 days prior to the date of such hearing.
  - (2) The Town shall also have such other remedies as are provided by law.