

## COUNTY HAZARDOUS WASTE MANAGEMENT

WHEREAS, the Mitchell County Board of Commissioners finds it necessary and advisable to regulate the location and management of hazardous and low-level radioactive waste management facilities with the jurisdiction of Mitchell County in order to protect the health, safety and welfare of its citizens and the peace and dignity of the county as provided in NCGS 153A-121;

WHEREAS, the safe management, transfer, transportation, reuse, recycling, neutralization, detoxification and incineration of these wastes are essential to the public health and safety;

WHEREAS, when improperly handled, these wastes pose a threat to water, land and air resources of the County, as well as to the health and safety of its citizens; and

WHEREAS, notice was duly given and a public hearing held on the question of adoption of this ordinance, and all objections hereto being properly presented and considered.

NOW, THEREFORE, BE IT ORDAINED by the Mitchell County Board of Commissioners, by the authority vested in it by the NCGS chapter 153A, Section 121, 128 and 136:

Section 1. TITLE. This Ordinance shall be known and may be cited as the County Hazardous Waste Management Ordinance.

Section 2. PURPOSE. The purpose of this ordinance is to:

A. Regulate the location, operation and care of waste management facilities dealing with the storage, transfer, treatment or disposal of hazardous and low-level radioactive waste within Mitchell County.

B. Assure that the best management practices are used in handling such waste.

C. Assure that before such waste is placed into permanent or long-term storage, the best available technology is used in treating such waste including, but not by way of limitation, reuse transfer and transportation, recycling, neutralization, detoxification, incineration and maximum volume reduction.

D. Assure that, when these alternatives are not technologically feasible, retrievable above-ground storage (or retrievable below-ground storage if such wastes are explosive or flammable) be used in lieu of other means of disposal until appropriate methods of recycling or detoxification of the stored wastes are found, as directed by the North Carolina Waste Management Act, S. L. 1981, Chapter.

E. Provide that funds are available through levy of a privilege license tax to compensate Mitchell County for overseeing the effects of hazardous or low-level radioactive waste in Mitchell County.

Section 3. DEFINITIONS.

- A. "Acute Hazardous Waste" means the same as defined in 40 CFR Part 261.
- B. "Advisory Board" refers to the Mitchell County Advisory Board as set forth in Section 4 of this ordinance.
- C. "best Available Technology" is defined as any combination of commercially available technologies which together serve to maximize recycling for reuse of the Hazardous or low-level to maximize recycling for reuse of the hazardous or low-level radioactive waste, while rendering the unrecycled components either to their least harmful form of to forms amenable to eventual recovery.
- D. "Commissioners" shall mean the Board of County Commissioners for Mitchell County.
- E. "disposal" shall include the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous or low-level radioactive waste into or on any land in such way that such waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.
- F. "Facility" is defined as all land, structures, personnel and equipment used for the treatment, storage for more than 90 days, or for more that 30 days in the case of acute hazardous wasted, transfer and/or disposal of hazardous or low-level radioactive waste whether on-site or off-site.
- G. "Generator" means any person, by site, whose act or process produces low-level radioactive waste as defined above, or hazardous waste identified or listed in 40 CFR, part 261.
- H. "Hazardous Waste" is defined as solid or liquid waste, or a combination of solid and liquid wastes, which because of its quantity, concentration, or physical, chemical, or infectious Characteristics may (a) cause or significantly contribute to and increase in mortality or an increase in serious irreversible or incapacitating 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 and as defined in 40 CFR, Part 261.
- I. "Low-level Radioactive waste" is defined as radioactive waste not classified as any of the following: high-level radioactive waste, spent nuclear fuel as defined by the U.S. nuclear Regulatory Commission, Transuranic waste, or by-product material as defined in Section 11E(2) of the Atomic Energy Act of 1954, as amended (68 Statute 923).
- J. "Management Practices" is defined as methods of systematic collection, source separation, storage, transfer, Transportation, processing, treatment, recovery, and disposal of hazardous or low-level radioactive wastes.
- K. "on-site" means the same as defined in 40 CFR, Part 260.

L. "Person" is defined as any individual, corporation, partnership, firm, association, trust estate, public or private institution, group, agency or other entity or any successor, subsidiary, or division thereof.

M. "Storage" is defined as containment for a period of over 90 days (or over 30 days in the case of acute hazardous waste) in such a manner as not to constitute disposal.

N. "Transfer" is defined as handling greater than 1,000 kilograms per month of hazardous wastes and/or low-level radioactive wastes that are not generated on-site or stored over 90 days.

O. "Treatment" is defined as any method, technique, or process, including neutralization, designed to change the physical, or process, including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous or low-level radioactive waste so as to neutralize such waste or so as to render such waste non-hazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste or low-level radioactive waste so as to render it non-hazardous.

Section 4. ADVISORY BOARD. The Board of County Commissioners shall appoint an Advisory Board to assist in facilitating the purposes of this ordinance. The Board shall consist of not less than six (6) or more than 18 members appointed by the Board of County Commissioners. The members of the Advisory Board shall serve terms as specified in their appointment, not exceeding four years, and shall have the duties and responsibilities specified herein and such others as the Commissioners may from time to time determine.

A. The members of the Advisory Board shall be appointed by the Board of County Commissioners from the public at large.

B. The functions and powers of the Advisory Board shall be as follows:

1. To review applications for permits required herein upon the request of the Commissioners;
2. To carry out functions assigned by this ordinance;
3. To promote safety and health in the management of hazardous and low-level radioactive wastes.
4. To provide a forum for citizens and industry in regulatory process.
5. To maintain contact with the Governor's Waste Management Board and other bodies concerned with hazardous waste management.
6. To keep itself informed about advances in the technology of hazardous waste and low-level radioactive waste management and to make recommendations to the County Commissioners

about ways to keep the County's regulations and management practices in tune with the use of both best available technology and best management practices in the field of hazardous and low-level radioactive waste management.

C. The chairperson of the Advisory Board shall be selected by the Advisory Board at its first meeting.

D. The Advisory Board shall meet as often as necessary, but at least four (4) times each year, at some central location, in Mitchell County.

E. A majority of the Advisory Board shall constitute a quorum for the transaction of business.

Section 5. HAZARDOUS WASTE AND LOW-LEVEL RADIOACTIVE WASTE PERMIT REQUIRED.

A. Each facility shall obtain a permit to operate in Mitchell County, except generators who store hazardous or low-level radioactive waste on-site for less than 90 days or acute hazardous wastes for less than 30 days.

B. No Construction or site preparation for a new hazardous waste or low-level radioactive waste facility shall be initiated prior to issuance of the permit required hereunder.

C. No permitted facility shall significantly change its operation, including volume and types of wastes stored, transferred, treated or disposed of, without first obtaining an amended permit therefore.

Section 6. APPLICATION PROCEDURE FOR ALL PERMITS EXCEPT THOSE FOR STORAGE AND/OR TREATMENT ON-SITE AT THE POINT OF GENERATION.

An applicant for such a permit shall prepare and file a hazardous waste permit application with the County Commissioners for any hazardous waste or low-level radioactive waste facility. The applicant shall submit to the County two copies of all information required by federal and state agencies for the facility for which it requests a county permit at the same time such information is submitted to the state and federal governments except facilities already located in the county which shall file such documents when they initiate the application process. The review procedure shall not begin, nor shall the application be designated as complete, until such time as all required data are submitted and the appropriated fees are paid, or suitable arrangements or suitable form of payment have been approved by the Commissioners. Where information required by Paragraphs A, B, C and Section 9, is included in documents submitted to federal and state agencies, such information need not be restated for the County permit; however, additional information as to how these items directly impact the County as well as cross-references to state and federal documents shall be included.

A. The application shall contain at least the following information:

1. A description of the applicant, full information on its financial capability, and detailed history of all its past activities in the field of hazardous and low-level radioactive and subsidiary, affiliate or Parent Corporation has operated at any time within ten years next preceding the application.
2. The names and addresses of all directors, executive officers, shareholders owning more than five percent (5%) of the outstanding stock of the applicant, general partners or joint venturers in the applicant.
3. A list identifying any legal action taken during the last ten years against the applicant, its parents, subsidiaries, affiliates, directors, executive officers, shareholders holding more than five (5%) of its outstanding stock, general partners or joint venturers involving:
  - (i) Any administrative ruling or order issued by any state, federal or local authority relating to revocation of any environmental or waste management permit or license, or to a violation of any state or federal statute or local ordinance relating to waste management or environmental protection.
  - (ii) Any judicial determination of liability or conviction under any state or federal law or local ordinance relating to waste management or environmental protection; or
  - (iii) Any pending administrative or judicial proceeding of the type described in this item.
4. Evidence of liability insurance including environmental impact liability insurance to cover the proposed operation and a history of any claims against the company at any site, including the applicant and all subsidiaries and affiliates including the parent corporation of the applicant within the last ten years.
5. Justification for anticipated benefits from the project.
6. A description of the scope of the proposed project including a schedule of how much and what kinds of hazardous or low-level radioactive material the facility will accept, where the material will come from, what pretreatment will be required of wastes unacceptable to the facility without such pretreatment and how long the facility is expected to operate.
7. The estimated project costs, including information on: the construction costs for the facility; the yearly site operation expenses; and an estimate of the costs for the lifetime of the project.
8. The proposed method of financing the project, including development, operation and closure stages with information concerning financial commitments.

9. The proposed number of employees and types and positions including information on the training and experience required for each position, salary ranges for each position, and safety precautions to be undertaken.
  10. The anticipated date to begin construction and completion.
  11. The anticipated date to begin operation.
  12. A detailed estimate of the types and amounts of all local government services needed each year by the facility.
  13. A description of emergency procedures and safety and security precautions that will be in place at the facility; this information should include details on emergency assistance that will be required from the surrounding community.
  14. A description of the environmental protection measures to be taken by the applicant to prevent contamination in and around the facility and a description of planned monitoring systems, with an estimated annual budget for each of these items for a period of not less than five years.
  15. A description of environmental protection measures to be used during transportation of materials to and from the facility, with an estimated annual budget for these arrangements and an estimate of the volume of material to be transported during each year of the facility's operation.
  16. A description of the site closure plan for the facility, the anticipated date of closure and an estimate of the site closure costs.
  17. A description of anticipated need for post-closure.
- B. A map or maps attached to the application shall include but are not limited to the following information:
1. Ownership
    - (a) Name, address and telephone number of legal owner and his agent, of the real estate sought to be used;
    - (b) Name, address and telephone number of each professional person responsible for design and for surveys;
    - (c) Description of any existing rights-of-way or easements affecting the property;

(d) Reference to existing restrictive covenants on the property, if any.

2. Description – Location of property by tax map, parcel number and deed book and page reference or other evidence of title of the current owner.

3. Features – Each map shall contain the following information:

(a) The map shall be drawn to a scale of not less than 200 feet per inch.

(b) A regional location or vicinity sketch map to a scale of not less than 1 inch to 1 mile showing the relationship of the project site to the surrounding area.

(c) Graphic scale, date, approximately north arrow and legend.

(d) The location of the property in relation to adjoining property and streets, the names of all adjacent property and streets, or the names of all developments located within one mile of the proposed site.

(e) The names and addresses of adjoining property owners according to County tax records.

(f) The location of all boundary lines of the property.

(g) The total acreage of land in the project in Mitchell County and any other county if applicable.

(h) The location of existing and/or platted streets easements, buildings (including mobile homes), railroads, parks, cemeteries, bridges, sewers, water mains, culverts, water wells, and gas and electric lines.

(i) The location of water bodies, water courses (including sinkholes, dry stream beds and pond overflow streams groundwater aquifers, springs and other pertinent features).

(j) The location and width of all existing and proposed street rights-of way and easements, and other public ways.

(k) The location, dimensions and acreage of all property proposed to be set aside for various uses on the applicant's property.

(l) The location of all test well and borings.

(m) The location of the 100 year flood plain, flood of record standard project flood, and inundation due to a dam break.

(n) A geologic map shall be prepared by a competent geologist at the same scale as the project site map showing all surface and subsurface geologic and geo-hydrologic features and potential geologic hazards that are pertinent to determining the desirability of granting a permit. This map shall include but not be limited to:

1. The location of faults, dikes and sills;
2. The location, attitude and trend of joints and fractures;
3. The location of present and former borrow pits, mines, shaft adits and quarries;
4. Identification and location of any mineral resources potentially made non-recoverable, by reference to technology then economically feasible, by the proposed facility.
5. Potential effect on public water supplies; planned run-off collection and treatment and provisions for alternate supply systems.
6. Potential effect on public water supplies; planned run-off collection and treatment and provisions for alternate supply systems.
7. Possibility of site flooding; planned special facility design, special control dikes and buffer zone setback in area of standard project flood area.
8. Potential human exposure to treated waste water. Including planned safety procedures, clothing, instruction and practice for employees, planned oversized or redundant treatment capacity, effluent monitoring and automatic shutdown systems.
9. Nature and predictability of pollution movement, including planned stack height for incinerators with continuous stack and plume monitoring and recording until emission levels are predictable; planned segregation of incompatible wastes.
10. Potential human exposure to air pollution, including planned pollution control equipment, special combustion monitoring and automatic shutdown systems and special air monitoring arrangements.
11. Safety of transportation route, including evacuation and re-routing plans, planned training of emergency fire and medical personnel and local institutional support arrangements; planned train and certification of truck drivers and other waste handling personnel and

truck safety features.

12. Potential for noise impact, including limitations on hours for delivery and muffler installation.
  13. Potential for impact on environmentally significant lands, planned bonding, insurance, financial responsibility and monitoring.
  14. Proximity to residential areas or sensitive sites, including purchase of buffer zones on adjacent lands, reduction in facility size and distance limitation between similar facilities.
  15. Compatibility with existing lands uses, including orientation and layout of site plans, planned buffer zone set-back from use area to facility owner's exterior property line, referred to as "minimum interior buffer setback"; planned aesthetic design of facility and landscaping, to run concurrent with Mitchell County and State regulations.
  16. Compatibility with land use plans.
  17. Impact on existing or future economic activity, including predicted tax base expansion and privilege license tax.
  18. Potential for earthquake activity, including special facility design and evacuation plans to deal with such occurrences
  19. Post-use problems, including bonding, liability, financial responsibility and monitoring community and environmental health.
- D. A designee of the Commissioners shall compile copies of all reports, applications, minutes of Advisory Board meetings report by consultants, and similar material. These shall be placed in one location readily available to the public.
- E. Upon receipt of an application submitted pursuant to this section the Board of Commissioners may deny the same or referred to it by the Board of Commissioners, the Advisory Board shall with a 45 day schedule advertise in local newspapers, and present a summary of the application and the public shall have the opportunity to raise questions and concerns. Relevant written and oral question may be submitted for the applicant's response during the meeting.

Each application shall be analyzed by the county and if desirable by such consultants as are directed by the Board of County Commissioners. Such analysis shall be completed within 120 days of the date the application is determined to be complete unless this time is extended by the Board of Commissioners. The applicant may request the Commissioners to grant additional

time for responding to staff and consultant requests for additional information on a complete application.

County staff and each consultant shall make interim reports on the progress of their analysis of the application to the Advisory Board at its meetings, and they shall make a final report within 20 days of the completion of the analysis.

- F. Upon receipt of the final report, the Commissioners shall call a public hearing on the complete application along with the analysis by the County staff and consultants. The purpose of this hearing shall be for public review of the application. The staff shall give notice by certified mail of the time and place of the hearing to the owner and adjacent property owners depicted upon applicant's map. This notice shall be mailed not less than 14 days prior to the hearing. Notice of the hearing shall be posted by the applicant on the proposed facility property and on each and every roadway of access not less than 14 days prior to the date of hearing. This posted notice shall be posted by the applicant in a newspaper of general circulation in the county not less than 14 days prior to the hearing.
  
- G. Within 45 days after receipt of the final analysis, completed application and public comment, the Advisory Board shall make a recommendation to the Commissioner in open session whether to approve the application, deny it, or approve it with modifications. However, before making a recommendation to the Commissioners to approve the proposal or approve it with modifications, the Advisory Board shall make the following determination:
  - (1) That the construction and operation of the facility will not pose an unreasonable health or environmental risk to the surrounding locality.
  - (2) That the applicant (or facility operator) has the capability and financial resources to construct, operate and maintain the facility.
  - (3) That the applicant or operator has taken or consented in writing to take any and all reasonable measures to comply with applicable federal, state and local regulations and ordinances.
  - (4) That the applicant's plan represents the best available technology for handling the wastes for which the applicant will be permitted to handle.
  - (5) That the facility operator has demonstrated financial capabilities for site operations and site closure.
  - (6) That the facility operator has historically operated other hazardous waste facilities in substantial compliance with applicable state or federal law or local ordinance relationship to

waste management and environmental protection.

- H. The Commissioners shall review the recommendation of the Advisory Board and make its final determination in writing with 45 days of receipt of the recommendation of the Advisory Board or from the date of the permit decision by state or federal agencies, whichever is latest. The commissioner shall make the finding listed in G above before approving or conditionally approving the application. If the Commissioners conditionally approve the application, the applicant shall submit a written agreement to all conditions specified in such approval within 60 days from the date of the approval or such approval shall be invalid.
- I. A permit shall be valid for not more than 18 months from the date it is granted by the County Commissioners unless the applicant begins construction of the facility within such period and continues to construct or operate the facility according to specified conditions and the applicant wishes to construct or operate the facility, it shall follow the procedures set forth in Section 6 or 7 and pay the filing fee specified in Section 8.

Section 7. APPLICATION PROCEDURE FOR ALL PERMITS FOR STORAGE AND/OR TREATMENT ON-SITE AT THE POINT OF GENERATION.

- A. Application for an on-site storage or treatment permit shall be made by submitting to the county commissioners a copy of all information submitted for state and federal permits.
- B. Hazardous or low-level radioactive waste generators filing permit application to store or treat wastes on-site at the point of generation shall submit to the Commissioners an application that includes the following:
  - (1) A summary of all spills at the site occurring within the last ten years and the resultant cleanup operation.
  - (2) A detailed description of the company's in-house monitoring and safety programs
  - (3) Any additional information the Commissioners may deem relevant to assessing the facility's impact on the health and welfare of the county's citizens.

At any time prior to the final determination of the permit application by the County Commissioners pursuant to Section 6-H of this ordinance, the County Commissioner or their designee shall have the authority to request the applicant to provide additional information the County Commissioners may deem relevant to assessing the permit application.

- C. The Commissioners, or the Advisory Board, if so directed by the Commissioners, shall hold a public hearing to consider the application with 45 days of receipt, after notice, as specified in Section 6-F. In all cases where the hearing is held by the Advisory Board, it shall

recommended to the Commissioners one of the following courses of action with 20 days of the public hearing:

- (1) To grant a permit on the basis of the information submitted.
- (2) To deny a permit on the basis of the information submitted.
- (3) To grant the permit with certain additional conditions.
- (4) To seek further information before taking final action either from the applicant requesting the permit or from independent consultants selected by the Commissioners.

- D. If the Commissioners select option 4 above, the information sought shall be presented to the Advisory Board at a public hearing within 60 days and the Advisory Board shall make its recommendation to the Commissioners within 30 days of such public hearing. The Commissioners shall in such cases take action within 30 days of receiving this recommendation or within 30 days of final action on the state or federal permit, whichever is later.
- E. In cases where the Commissioners hold a hearing without reference to the Advisory Board, the Commissioners shall take action within 30 days of the public hearing unless they require additional information, in which case, action shall be taken within 30 days of receipt of such information or within 30 days of final action on the state or federal permit, whichever is later.
- F. Existing industries shall apply for this permit within 60 days form the effective date of this ordinance.

Section 8. APPLICATION AND PROCESSING FEES.

A . All applicants requesting a hazardous or low-level radioactive waste disposal permit shall pay an application processing fee to Mitchell County. The application processing fee shall be used to reimburse the county for the costs of assessing the environmental and economic impact of the facility and administration of the applications, including the verification of information contained in the application. These costs may include securing the services of professions consultants on a contract basis.

B. No action shall be taken on permit application until the county has receive payment of the initial application processing fee in an amount to be determined by the type of facility as follows:

On-site storage	\$ 5,000.00
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On-site storage & treatment	\$ 5,000.00
Transfer facilities	\$ 5,000.00
Treatment facilities	\$50,000.00
Land disposal facilities	\$50,000.00

C. In the event that the county incurs costs in processing an application which exceed the initial application processing fee, then the county shall bill the applicant, as additional application processing fees, for the additional costs so incurred, and such fees shall be payable by the applicant upon billing by the county. No application shall be approved except after payment of the additional costs so billed.

D. Any portion of an initial application processing fee which is in excess of the costs incurred by the county in processing the application shall be refunded to the applicant with 30 days of final action on the application.

Section 9. SPECIFIED CONDITIONS ON THE PERMIT

A. The Advisory Board may recommend and the Board of Commissioners may impose specified conditions on issuing a permit, as will, in their opinion, assure that the facility in its proposed location will meet the findings required in Section 6-G. All such specified conditions shall, be entered in the minutes of the meeting at which the permit is issued. All specified conditions shall run with the permit and be binding on the original applicants, their heirs, successors and assigns, as long as the land is used for the permitted use. The factors that shall be addressed for inclusion of specified conditions shall include but not be limited to 1 through 20 below. Possible conditions are listed to the right of the factor considered only by way of example and not by way of limitation.

- (1) Contaminant flow period to water table.
  - Leachate monitoring, collection and withdraway systems.
  - Clay and synthetic liners; extra thickness, multiple liner.
  - Spill prevention and containment measures.
  
- (2) Contaminant movement with groundwater.
  - Groundwater monitoring systems at site and in potentially affected areas.
  - Subsurface “slurry wall” barriers.
  - Controls on groundwater withdrawals in area.
  
- (3) Predictability of Contaminant movement.
  - Additional preconstruction soil borings and groundwater modeling.
  
- (4) Potential effect on surface water.
  - Collection systems for surface water run-off

- Liability Insurance.
- (5) Potential effect on aquifers.
- Provision of alternate water supply system.
  - Liability Insurance.
  - Contingency plan for sudden or non-sudden spills and an impact of cleanup on the environment.
- (6) Potential effect on public water.
- Special run-off collection and treatment.
  - Provision of alternate water supply system.
- (7) Possibility of site flooding.
- Special facility design.
  - Special control dikes.
  - Special liability insurance.
  - Buffer zone setback in area of standard project flood area.
- (8) Potential human exposure to treated waste-water.
- Oversized or redundant treatment capacity.
  - Effluent monitoring and automatic shutdown systems.
  - Liability insurance.
- (9) Nature and predictability movement.
- Increased stack height.
  - Modeling of groundwater movement.
- (10) Potential human exposure to air pollution.
- Additional, oversized or redundant pollution control equipment.
  - Increased stack heights
  - Special combustion monitoring and automatic shutdown systems.
  - Special air monitoring arrangement.
- (11) Safety of transportation route.
- Evacuation plans and training.
  - Transportation re-routing.
  - Access road construction.
  - Training of emergency fire and medical personnel.
  - Truck safety features.

- (12) Distance between sensitive sites and transportation route.
  - Relocation of schools or other sensitive facilities.
  
- (13) Potential for noise impact.
  - Limitation on hours for delivery.
  - Muffler installation.
  
- (14) Potential for impact on environmentally significant lands.
  - monitoring and protection of environmentally significant lands.
  
- (15) Proximity to residential areas or sensitive sites.
  - Purchase of buffer zone on adjacent lands.
  - Reduction or limitation in facility size.
  - Distance limitation between facilities.
  
- (16) Compatibility with existing land uses.
  - Orientation and layout of site plans.
  - Buffer zone setback from use area to facility owner's exterior property line referred to as a minimum interior buffer setback.
  - Aesthetic design of facility and landscaping.
  - Volume reduction requirements.
  - Regular reporting of types and volume of waste handled.
  
- (17) Compatibility with land use plans.
  
- (18) Potential effect on property value.
  
- (19) Impact on existing economic activity.
  - Tax base expansion.
  - Privilege license tax.
  
- (20) Potential for earthquake activity.
  - Special facility design.
  - Evacuation plans.
  
- (21) Inspection and monitoring.
  - Employees and agents of the county have the right at any time to go on the premises for purposes of inspection and monitoring.

B. The Commissioners may restrict or limit the amounts and types of wastes entering the proposed site, may limit or restrict the type of treatment, handling and disposal activities, or

may require additional treatment or handling of waste before entering, leaving or being disposed of on the site..

In addition to conditions regarding the appropriateness of the proposed waste management scheme to the nature of the wastes handled, certain other conditions must be met by the proposed waste management facility. These include, but are not limited to:

- (1) Low-level radioactive waste and hazardous waste shall not be disposed of at the same facility.
- (2) No two waste management facilities, either hazardous or low-level radioactive waste management facilities, shall adjoin, and no more than one facility of either type shall be located per township nor shall a facility be located within five miles of a public water supply, school, hospital, nursing home, or other facility, with the exception of on-site storage and treatment at the point of generation.
- (3) All wastes, whether hazardous or low-level radioactive, placed into any form of storage shall be retrievable and identifiable using best management practices.

#### Section 10. ENFORCEMENT

A. In General: Pursuant to the power vested in the County Commissioners by NCGS 153A-212, and -136, the county through its responsible officers shall enforce the provisions of this ordinance to ensure and safeguard the public health, safety and welfare.

B. VIOLATIONS: Any non-compliance with conditions of a county permit or operation of a facility without a permit, any release of hazardous or low-level radioactive waste in amounts sufficient to constitute a hazard to the public health and safety, any non-compliance with the procedural requirements of this ordinance or refusal to permit county officials designated under this ordinance to enter buildings, structures, enclosed areas or other areas in the performance of their lawful duties, and refusal to pay taxes and fees as provided for by this ordinance, and any failure to provide information or apply for amendment to permit(s) as may be required by this ordinance upon proper notice shall be a misdemeanor, which may be punished as indicated in Chapter 14 of the General Statutes of North Carolina.

In addition, any person violating this ordinance shall be liable for all costs incurred by the county in enforcing its provisions.

C. EVERY DAY A SEPARATE VIOLATION: Each day of violation of this ordinance shall constitute a separate offense.

D. INJUNCTIONS: The County may seek injunctions in any court of competent jurisdiction when the operation of a hazardous or low-level radioactive waste facilities is in the judgment of the Health Department creating an imminent hazard to the health, safety and welfare of the public. The County may also seek and other appropriate legal or equitable relief that it deems necessary

or appropriate to ensure the public health and welfare.

- E. PERMIT REVOCATION: For any facility operator who has committed a violation, as defined in Section 10-B above, or for whom the continued operation of the facility poses an unreasonable shall be empowered to recommend to the Commissioners revocation except after a public hearing conducted by the Advisory Board upon hearing shall be publicized in advance according to the procedure in Section 6-F. At such hearing the facility operator may present evidence to the Advisory Board in mitigation, to demonstrate subsequent remedial action, etc. If the Advisory Board recommends that the permit be revoked, it shall so report to the Commissioners in writing within (10) days of the public meeting held by it. Within (10) days of the receipt of the recommendation, the Commissioners shall hold a public hearing following which they shall determine whether to revoke the permit. The Commissioners may revoke or may continue the permit upon finding (1) that the facility operator has made a good faith effort to comply with the permit and to remedy violations, (2) that continuation of the permit would not endanger the public health and welfare, and (3) the Facility operator has proposed a plan to remedy and other hazardous conditions on the facility site as expeditiously as possible.

#### Section 11. MONITORING AND SAFETY

- A. Purpose: The Purpose of this section is to supplement and complete the monitoring and safety activities of the federal and state Governments. The Commissioners recognize the primary responsibility of the federal and state governments in this area. However, they also recognize that appropriations and manpower to fulfill this responsibility is thereafter necessary and lawful. The duties described herein shall begin upon receipt of a permit application.
- B. Duties of the Health Department (or the Commissioners' designee, hereafter referred to as the "Health Department"):
- (1) The Health Department is directed to design a monitoring and safety program for any facility requesting a permit from the County.
  - (2) The program shall take into account the nature of the facility and the monitoring activities of state and federal agencies and shall be designed to supplement and complete those activities as well as to ensure that they are being carried out in a thorough and responsible manner.
  - (3) The program shall be submitted to the Advisory Board for a recommendation and to the Commissioners for approval.
  - (4) On approval, the Commissioners shall designate the Health Department or some other agency as responsible for carrying out the program.
- C. The program may include the following duties as appropriate:

- (1) To monitor the air, surface water, and groundwater during the operation of the facility(s);
  - (2) To monitor soil, plant, microbial, viral, and animal samples during the operation of the facility(s);
  - (3) To conduct human health surveys and monitoring in the area around the facility(s) including statistical surveys, determine the effect of exposure and/or to trace any accidental discharge of hazardous or low-level radioactive waste;
  - (4) To verify the content of shipments and storage of hazardous or low-level radioactive waste against shipping manifests and other records;
  - (5) To inspect the interiors of structures located on the waste facility site(s) for hazardous, unhealthy, or other wise unlawful conditions;
  - (6) To inspect and take samples within the site boundaries of any hazardous or low-level waste facility(s) in the County;
  - (7) To verify, by laboratory analysis, that samples taken by facility operators are in fact what they are claimed to be, and to check the accuracy of any laboratory facilities within the county which regularly test hazardous or low-level radioactive waste samples;
  - (8) To prepare an emergency response plan, and prepare adequate emergency medical equipment and personnel to handle emergencies arising out of the transportation storage, treatment, or disposal of hazardous or low-level radioactive waste in the County, to the extent that such measures are not otherwise undertaken by the facility operator(s) or the state and federal governments;
  - (9) To monitor traffic flow near facilities on approach routes within the County, and design measures to minimize traffic disruption and accidents, with special consideration for the routing of school buses and the safety of the County's school children.
  - (10) To perform such other duties as the Commissioners direct from time to time to safeguard the public health and welfare.
- D. Duties of the County Financial Officer; The County Finance officer shall maintain a depository for all bond and insurance policies required by this ordinance. The Finance Officers shall also maintain all record necessary to provide financial information essential to administration of Section 13 of this ordinance.
- E. Duties of County Attorney: the County Attorney, in addition to duties provided by statute, shall provide the commissioners with advice on legal matters, assistance with drafting and review bonds posted.
- F. Other Duties: The County Commissioners shall direct responsible officials of the County to undertake such other monitoring and safety acts as may be required by this and other sections of this ordinance.

## Section 12. OPERATION

- A. Disposal Request:
- (1) All persons who operate facilities to handle, treat transfer, store or dispose of hazardous or low-level radioactive waste in County, other than on-site storage and/or treatment at

the point of generation, must provide the county or its designee with a written disposal request for each waste type by generator and receive approval of the same for all wastes proposed to be brought to the site. Such approval shall be valid for a period of time stated therein, not exceeding 30 days. This request must detail the generator's efforts to reuse, recycle, reduce in volume, detoxify, neutralize, incinerate, or appropriately dispose of the waste at the point of generation, or subsequent efforts at some other waste management facility, before shipment to County or within County to such facilities. Such persons must also specify how treatment, handling or disposal of such waste. The request must also include information regarding the condition and contents of the shipment, and assurance of proper visible labeling of acute hazardous wastes on the vehicle, before the shipment enters county. The following information shall also be submitted in writing with each Disposal Request:

- a. Name, location and business of the waste generator and contact person at the generator.
  - b. Process in which waste was generated and marketable products arising from that process.
  - c. Volume, chemical and physical nature of waste.
  - d. Manner in which is package for shipment.
  - e. Proposed treatment and disposal procedure: The disposal Request shall contain written confirmation of a. to d. from the waste generator. A separate request must be made for each waste type by generator: The County will submit a written response to the applicant no later than 30 days following receipt of a request: However, a request is not complete until the county has received all information necessary to arrive at an informed decision. The facility operator may request a hearing before the County Commissioners shall schedule a public hearing with 10 days to hear such challenge. The facility operator' shall have the burden of proof in any such hearing. No waste shall be received by any facility in the county until approval as above set forth has been received.
- (2) All incoming waste must be stored on the facility site, in an area utilizing best management practices for the proper storage of such wastes, while laboratory analysis is being performed until such analysis is completed. The Health Department may hire or designate a consultant who may be a chemist or radiation specialist qualified to sample wastes at the gate to the facility and to visually inspect the truck, the manifest forms and a copy of the disposal request and its approval and the condition of the waste and its container before the waste enters the facility. No waste may be otherwise handled treated or disposed of on-site until the laboratory analysis is completed and the consultant verifies in writing to the site manager that the shipment may be processed.

B. Management practices Orders:

- (1) The Advisory Board shall keep abreast of developments in waste management technology and developing management practices. If the Advisory Board discovers a new management County covered by this ordinance, which could be employed to

recycle, reuse, neutralize, detoxify, incinerate, or reduce the volume of hazardous or low-level radioactive waste generated, stored, disposed, or transferred in the County, it shall then submit the report to all affected facility operators within the County. The facility operator(s) shall reply in writing to the Advisory Board within 45 days, specifying plans to implement the practice, or reasons why the facility operator (s) believe(s) the practice should not be implemented.

- (2) If, after the exchange of reports, the Advisory Board finds that the practice should be implemented at facilities in the County, it shall prepare a report and proposed order to that effect and submit them to the Board of Commissioners. Copies of any such report and proposed order shall simultaneously be forwarded to each facility operator within the County. Unless written objections thereto are filed with the Board of Commissioners within 30 days from the date such reports and proposed orders were forwarded to the operators, the commissioners may approve and issue such order in the proposed or in some other form. Upon receipt of written objections, timely filed, the Commissioners shall schedule and hold a public hearing with 30 days of expiration of time for filing objections. Notice of this hearing, the Advisory Board and the facility operators objecting shall present their cases, and the facility operators shall be assigned the burden of proof. The commissioners, after this hearing may approve and issue the proposed order, modify and issue the proposed order, deny insurance of the proposed order, or remit the matter to the Advisory Board for further study.

- C. Other Duties: The County Commissioners shall direct responsible officials of the County to undertake such other duties as may be required by this or other sections of this ordinance.

### Section 13. PRIVILEGE LICENSE TAX.

A. Purpose: The facility operator(s) shall be assessed the following tax for such reasonable expenses that the County may incur for the following emergency services.

- (1) Equipment acquisition: the acquisition of special emergency equipment for dealing with hazardous and radioactive substances, to include protective clothing, detoxification equipment, breathing apparatus, collection apparatus, alarm systems, direct telephone or radio connection equipment, Geiger counters, special medical vehicles, and other such equipment as the County may reasonably require.
- (2) Equipment maintenance: The cost of necessary maintenance and replacement of equipment as describe in subsection 1.
- (3) Evacuation plans; The cost of preparing, testing, disseminating, and implementing both on-site and of off-site emergency evacuation plans, the cost of keeping such plans current, and the cost of carrying them out should the need arise.
- (4) Initial training: The cost of initial training for the County's emergency response personnel, to include psychological preparedness training, to deal with emergency situation involving hazardous or low-level radioactive waste, and the cost of expanding such training as necessary.

- (5) Updating training. The cost of updating such training as described in subsection 4 from time to time, and the cost of training new personnel.
- (6) Hospital preparedness: Additional costs to the County's hospitals as a result of the need for special emergency units at those hospitals to handle hazardous and low-level radioactive waste emergencies.
- (7) Transportation emergency fund: An additional amount to purchase insurance to cover the costs of emergencies caused by accidents involving the transportation of hazardous or low-level radioactive waste to or from such facilities, for accidents occurring between the site boundary and the county line.
- (8) Post-closure emergency fund: An additional amount to purchase insurance to cover the costs of emergency services required to handle emergencies caused by hazardous or low-level radioactive waste facilities after such facilities have closed.
- (9) Other: The cost of other emergency services and preparedness which shall be required from time to time.

B. Monitoring:

(1) Purpose: The purpose of this subsection is to ensure that adequate funds are available to fully monitor the environmental and health effects of the location of hazardous or low-level radioactive waste facilities in the County, and to ensure that such monitoring is in fact carried out. The County Commissioners recognize that the state and federal governments have primary responsibility in this area, but they also recognize that the resources of these governments are limited, and that the data generated by this County monitoring program is intended to supplement and complete the data generated by the state and federal monitoring programs.

(2) Monitoring costs: The facility operator(s) shall be assessed a privilege license tax to compensate for the monitoring functions undertaken by the County Pursuant to section 11. This tax shall include:

- a. Salaries of County personnel needed to carry out any of such monitoring functions.
- b. Administration support cost which are reasonably necessary to fulfill the duties of the county monitoring personnel, to include office supplies, secretarial time, maintenance of a public document room, and other such costs.
- c. The costs of training inspection and monitoring personnel and of updating such training from time to time.
- d. Costs incurred in hiring consultants to assist the county in monitoring.
- e. An additional sum, to be agreed upon by the facility operator and the County Commissioners, for maintain monitoring to the environment and human health effects for perpetuity. This money shall be placed into a non-reverting fund, , with interest to

accrue to the fund, which shall be managed by the County Finance Officer, who shall file an annual accounting of the fund to the County Commissioners.

f. The cost incurred to buy and maintain equipment needed for monitoring.

g. Other reasonable costs of monitoring as may be necessary.

C. Other cost: The County Commissioners find that the following costs are associated with hazardous or low-level radioactive waste facilities and their operations, that the County is not otherwise compensated for such costs and that such costs shall therefore properly be assessed under G.S. 153A - 152.1 (a) to the facility operator(s):

(1) Recordation: it shall be a matter of public record that property is located within a five mile radius of a hazardous or low-level radioactive waste facility, operating or closed. The costs incurred by the registrar of deeds for placing notations to that effect on all deeds, grants, indexes, plats, and other relevant affected documents shall therefore be assessed to the facility operator(s):

(2) Public information: The location of a waste facility is a matter of which the public should be completely informed and concerning which the public should have ready access to the relevant information. Therefore, the following costs shall be assessed to the facility operator(s).

a. Consultation with adjoining landowners: the costs of advising adjoining landowners: the costs of advising adjoining landowners as to their legal rights with respect to the facility, and as to health precautions.

b. Consultation with farmers: the cost of advising farmers in the surrounding area as to health precautionary measures for their live stock and crops in the event of accidents or spills.

c. School education programs: costs incurred. To the extent not already provided for by county or state school budgets, in presenting instructional material to county school children on the facility its potential hazards, and emergency preparedness.

d. Health information: cost incurred by the County Health Department in disseminating information concerning the facility and its effect on the public health.

(3) Construction and maintenance of roads: To the extent that the County is not otherwise compensated therefore by the federal or state governments, costs incurred in improving or maintain existing roads and right-of-ways, acquiring new rights- of-way, constructing access roads, building parking areas, erecting warning signs or signals, and other such expenses as the County may demonstrate are associated with the facility and the increased traffic associated with it.

(4) Loss of Ad Valorem taxes: To the extent that off-site contamination, regardless of negligence on the part of the facility operator, reduce Ad Valorem revenues to the County, the loss to the County shall be compensated by the facility operator(s).

(5) Annual legal advice: The cost to the County of an annual review of those ordinance and other laws and regulations in the field of waste management.

(6) Attorney's fees: The cost to the County of reasonable legal representation in all cases arising out of the operation of the facilities in the County, or arising out of challenges to this ordinance provided that (1) the County is the prevailing party or (2) the County has had substantial justification for its position, and has not litigated vexatiously.

(7) Bonding: The costs to the County of arranging suitable bonding or insurance or other financial security arrangements to cover the costs arising out of the location of facilities within the County.

(8) Other: Other costs the County may incur, and which the County may demonstrate are associated with the operation of the facility(s), and for which the County is not otherwise compensated.

D. How tax calculated: The tax shall be calculated as follows:

(1) Annual: The annual tax shall be calculated by adding together the above enumerated expenses at the end of the calendar year.

(2) Quarterly payments: the facility operator may arrange to make estimated quarterly payments in advance.

(3) More than one facility: If there is more than one hazardous or low-level radioactive waste facility in County subject to this ordinance, the total tax for each facility shall be pro-rated among the various facility operators according to the percentage of the total weight of such wastes each operator has generated, treated, or disposed of in the County for this calendar year.

Section 14. INSPECTION BY COUNTY.

Any facility holding a permit under this ordinance shall be subject to inspection by a representative of the County at any time it is operation or has any personnel preset.

Section 15. COPIES AVAILABLE TO PUBLIC.

The facility holding a permit under this ordinance shall be subject to inspection by a representative of the County at any time it is in operation or has any personnel present.

Section 16. SEVERABILITY.

If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason

adjudged invalid or unconstitutional or unenforceable by any Court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 17. WASTE CLEANUP FUND

A. Purpose: The County Commissioners share the North Carolina General Assembly's great concern for the safe and effective disposal of hazardous and low-level radioactive waste, and have in addition a great concern for the economic and public health costs resulting from inefficient cleanup of past accidents. The County Commissioners recognize the benefit of speedy cleanup, manifested in monetary savings and in the prevention of permanent damage to life and property. The purpose of this section is to establish a cleanup fund, to be funded by an additional privilege license tax, particularly for defraying the cost of any cleanups which arise out of the location and operation of hazardous and low-level radioactive waste facilities in the County.

B. Establishment of fund: There is hereby established, pursuant to the authority vested in the County Commissioners by F. S. 153A-121.1, 143B-216.10 and 130A-295(b), a special hazardous waste cleanup fund, to be disbursed liberally and speedily upon notification of any dangerous spill or leakage that is not immediately remedied by the party responsible or by the federal or state governments. Should the fund be found to be invalid for whatever reason, the monies collected and unspent and any remaining accrued interest shall be returned to the facility operator(s) in the same shares as it was paid in; otherwise, the fund shall be non-reverting.

C. How collected: The operator shall deposit in trust with the County one-half of one percent (0.05%) of the income of the comprehensive hazardous waste treatment facility, as defined in G.S. 130A-290 (i) payable within 30 days of each calendar quarter until the total shall equal an amount of two hundred fifty thousand dollars (\$250,000). As used herein, income means gross operating revenues less refunds, rebates and allowances. This fund shall be available to the County in which the comprehensive hazardous waste treatment facility is located for the purpose of defraying the cost of any cleanup which might be required at the comprehensive hazardous waste treatment facility. The County, in its discretion, may use up to fifty thousand dollars (\$50,000) of this total to establish facilities. Financial records shall be subject to the audit of the payment shall be corrected by credit or debit in the next payment or payments by the operator of the hazardous waste facility. Nothing herein shall be construed to limit in any way funds which might be available to local government from other sources.

D. Management: The County Finance Officer and one member of the County Commissioners shall be appointed managers of the fund. They shall give an annual accounting of the fund to the County Commissioners and to all subject facility operators in the county. The County Finance Officer shall pursuant to this section prepare a report on the best means of investing these tax revenues within thirty (30) days of the receipt of an application for a major hazardous or low-level radioactive waste facility in the County. It is the intent of the County Commissioners that these

revenues shall not be invested in the securities, obligations, or other instruments of industries which are major producers of hazardous or low-level radioactive waste.

E. Authority to disburse: The County Commissioners by majority vote, shall be the disbursing authority for payments made from the fund. The County Commissioners shall prepare a written report of any meeting at which such vote is taken, including the name of persons voting for and against, amount voted, and reasons.

F. Procedure for closing of fund: The County Finance officer Shall prepare a plan for the closing of the fund within a reasonable time after the closure of the facility(s) in the County.

Section 18. FILING OF ANNUAL REPORTS BY OPERATORS:

A. Each operator of a facility shall submit to the Commissioners, on or before April 30 of each year, a report of its operating activities during the preceding year. Such report shall state the amounts and types of hazardous and low-level radioactive waste received and types of hazardous and low-level radioactive waste received for management during the year; the names and addresses of each generator from whom hazardous or low-level radioactive waste was received during the year; the number of persons employed during the year; and any violations of applicable laws and regulations for which the facility was cited during that year.

B. Each operator of a waste management facility shall also submit to the Commissioners on copy of all reports which he is required to file with the North Carolina Department of Human Resources or any other state or federal regulatory agency having jurisdiction over such waste management facility.

C. Each facility shall maintain on its premises for inspection copies of all manifests for the current year and each of the preceding three (3) years.

MITCHELL COUNTY BOARD OF COMMISSIONERS

Ray Bryant, Chairman  
Bobby Jenkins, Vice Chairman  
Albert Canipe, Member  
Guss McKinney, Member  
Bill Slagle, Member

ATTEST:

Judy Young, Clerk to the Board

Date: 5 April 1986