

CHAPTER 152: HAZARDOUS AND LOW-LEVEL RADIOACTIVE WASTE

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GENERAL PROVISIONS**§ 152.01 TITLE; PURPOSE.**

(A) This chapter shall be known and may be cited as the county Hazardous Waste and Low-Level Radioactive Waste Management Ordinance.

(B) The purpose of this chapter is to:

(1) Regulate the location and safe operation of waste management facilities dealing with the storage, transfer, treatment, or disposal of hazardous and/or low-level radioactive waste within the county;

(2) See to it that the best management practices are used in its handling; and

(3) Ensure that the best available technology is used including reuse, recycling, neutralization, detoxification, incineration, and maximum volume reduction before the waste is placed into permanent or long-term storage. When these treatment alternatives are not technologically feasible, retrievable above-ground storage (or below-ground if explosive or flammable) is preferable to other means of disposal until appropriate methods for recycling or detoxification of the stored wastes are found as suggested in the state Waste Management Act, G.S. §§ 139A-290.
(Ord. passed 10-20-86)

§ 152.02 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

DISPOSAL. The discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous or low-level radioactive waste into or on any land so that the waste or any constituent thereof may enter the environment or be emitted into the air or discharge into any waters, including ground waters.

FACILITY. All land, personnel, and equipment used whether on site or off site.

HAZARDOUS WASTE. A solid waste, or combination of solid wastes, 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 serious irreversible or incapacitating reversible illness; or

(2) Pose a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

LOW-LEVEL RADIOACTIVE WASTE. Radioactive waste not classified as high-level radioactive waste, spent nuclear fuel as defined by the U.S. Nuclear Regulatory Commission, transuranic waste, or byproduct material as defined in Section 11E(2) of the Atomic Energy Act of 1954, as amended.

PERSON. Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, or other entity or any successor thereof.

SITE. Any facility (that is, individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, or other entity or any successor thereof) which holds hazardous or low-level radioactive waste longer than 90 days.

STORAGE. Containment for a period of over 90 days in such a manner as not to constitute disposal.

TREATMENT. Any method, technique, 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 the waste or so as to render the waste non-hazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume. The 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.

TRANSFER. Handling significant amounts of hazardous waste and low-level radioactive wastes that are not generated on-site or stored over 90 days.

WASTE BOARD. The county Waste Management Board described in § 152.03.
(Ord. passed 10-20-86)

§ 152.03 WASTE BOARD.

(A) A Waste Board shall be formed and shall include 13 members. The Waste Board shall be constituted as follows:

(1) Five at-large members;

(2) Three members from county government, with at least one from the health department;

(3) Five members to be appointed by the Board of Commissioners from the following categories: one from municipal government, two from the public at-large representing citizens involved in environmental matters, one farmer, and one from the business community.

(B) Each member shall serve a three-year term, with four of the initial board members serving one-year terms, another four members serving two-year terms, and the remaining five serving for three years so as to stagger the terms.

(C) The chairperson of the Waste Board shall be selected by the board at its first meeting.

(D) The board shall meet at least annually and as often as needed at some central location in the county.

(E) A majority of the board shall constitute a quorum for the transaction of business.

(F) The functions and powers of the Waste Board shall be as follows:

(1) To review the county's waste management program and make recommendations to the Board of Commissioners on ways to improve the program;

(2) To carry out the functions designated in this chapter—for example the application process as set forth in § 152.19, and recommending management practice orders and approving certificates of need as set forth in § 152.77;

(3) To promote safety and health in the management of waste;

(4) To maintain contact with the state Waste Management Board and other state bodies concerned with hazardous waste management;

(5) To assist localities in which facilities are proposed to be located;

(6) To keep itself informed about advances in the technology of hazardous waste and low-level radioactive waste management and make recommendations to the Board of 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;

(7) To review the practices of hazardous waste generators and low-level radioactive waste generators in the county not currently covered by federal and state regulations to determine if the county should require these generators to obtain further permits for continued production and management of these wastes.

(Ord. passed 10-20-86)

PERMITS

§ 152.15 HAZARDOUS WASTE AND LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT PERMIT REQUIRED.

(A) No new proposed storage, treatment, transfer, or disposal facility for hazardous waste or low-level radioactive waste shall be permitted to be located, erected, constructed, or otherwise established within the county prior to satisfactory compliance with the procedures hereafter set forth and prior to receiving a hazardous or low-level radioactive waste management permit as specified herein and prior to satisfactory compliance with each and every condition as specified by the Board of Commissioners as designated herein.

(B) No existing storage, treatment, transfer, or disposal facility for hazardous waste or low-level radioactive waste shall be permitted to significantly increase its volume of hazardous waste or low-level radioactive waste or to accept waste of a significantly different nature to be stored, treated, handled, or disposed of within the county prior to satisfactory compliance with the procedures hereafter set forth, and prior to receiving a hazardous or low-level radioactive waste management permit as specified herein, and prior to satisfactory compliance with each and every condition as specified by the Board of Commissioners as designated herein.

(C) No existing storage, treatment, transfer, or disposal facility for hazardous waste or low-level radioactive waste shall be permitted to continue operations within the county after 540 days from the adoption of this chapter without satisfactory compliance with the procedures hereafter set forth, including the receiving of a hazardous or low-level radioactive waste management permit as specified herein and satisfactory compliance with each and every condition as specified by the Board of Commissioners as designated herein.

(D) No construction or site preparation for a new hazardous waste or low-level radioactive waste management facility shall begin until a permit has been issued by the county.
(Ord. passed 10-20-86) Penalty, see § 152.99

§ 152.16 APPLICATION CONTENTS.

(A) An applicant shall prepare and file a hazardous waste permit application with the county Waste Board for any facility dealing with the storage, treatment, transfer, or disposal of hazardous or low-level radioactive waste. The permit applications shall address but not be limited to the items set forth in § 152.20 and shall present the potential impact of the facility on each listed item and the methods proposed by the applicant to mitigate any adverse impacts. The permit application shall be accompanied by all related documents submitted to the federal government and the state.

(B) The application shall contain at least the following information:

(1) A brief description of the company, full information on its financial capability, and a detailed history of all its past activities in the field of hazardous and low-level radioactive waste management, including a synopsis of every other facility it has operated or been involved with;

(2) Justification for and anticipated benefits from the project;

(3) 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 the pretreatment, and how long the facility is expected to operate;

(4) 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;

(5) The proposed method of financing the project, including development, operation, and closure stages;

(6) The proposed number of employees and types of positions, including information on the training and experience required for each position, salaries to be paid, and safety precautions to be undertaken;

(7) The anticipated date to begin construction;

(8) The anticipated date to begin operation;

(9) A detailed annual estimate of the types and amounts of municipal and county services that local government will need to provide for the facility;

(10) 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;

(11) A description of environmental protection measures to prevent contamination on and around the facility site and a description of planned monitoring systems, with an estimated annual budget for each of these items;

(12) 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;

(13) A description of the site closure plan for the facility, the anticipated date of closure and an estimate of the site closure costs;

(14) A description of anticipated need for post-closure care; and

(15) Evidence of liability insurance and a history of any claims against the company at any site, including the parent company or any subsidiaries.

(C) The application may be required to include the following and similar additional factors:

(1) Contaminant flow period to water table including leachate monitoring, collecting and withdrawal systems; clay and synthetic liners (extra thickness, multiple liners); spill prevention and containment measures;

(2) Contaminant movement with groundwater, including groundwater monitoring systems at the site and in potentially affected areas; subsurface "slurry wall" barriers; controls on other groundwater withdrawals in area;

(3) Predictability of contaminant movement, including additional preconstruction soil borings and groundwater modelling;

(4) Potential effect on surface waters, including collection systems for surface water runoff; effective exclusion systems for surface water run-on;

(5) Potential effect on aquifers, including provisions for alternate water supply systems; facilities for immediate pumping and treatment of contaminated water;

(6) Potential effect on public water supplies, including special run-off collection and treatment; provisions for alternate water supply systems;

(7) Possibility of site flooding, including 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 wastewater, including safety, clothing, instruction, and practice for employees; oversized or redundant treatment capacity; effluent monitoring and automatic shut-down systems;

(9) Nature and predictability of pollution movement, including stack height for incinerators with continuous stack and plume monitoring and recording, until emission levels are predictable; segregation of incompatible wastes;

(10) Potential human exposure to air pollution, including additional, oversized, or redundant pollution control equipment; special combustion monitoring and automatic shutdown systems; special air monitoring arrangements;

(11) Safety of transportation route, including evacuation plans and training; transportation re-routing; access road construction; training of emergency fire and medical personnel; truck safety features; local institutional support arrangements; training and certification of truck drivers and other waste handling personnel;

(12) Distance between sensitive sites and transportation routes, including relocation of schools or other sensitive facilities;

(13) Potential for noise impact, including limitations on hours for delivery; muffler installation;

(14) Potential for impact on environmentally significant lands, including bonding, insurance, financial responsibility; monitoring.

(15) Proximity to residential areas or sensitive sites, including purchase of buffer zones on adjacent lands; reduction in facility size; distance limitation between similar facilities;

(16) Compatibility with existing land uses, including orientation and layout of site plans; buffer zone setback from use area to facility owner's exterior property line specification, referred to as "minimum interior buffer setback"; aesthetic design of facility and landscaping; volume reduction requirements;

(17) Compatibility with land use plans, including change plans to zone out sensitive sites in surrounding areas;

(18) Potential effect on property values, including payments to neighbors for diminished property values; land value guarantees (conditional payments);

(19) Impact on existing or future economic activity, including tax base expansion; privilege license tax;

(20) Potential for earthquake activity, including special facility design; evacuation plans; and

(21) Post-use problems, including bonding, liability, financial responsibility; monitoring environment and community health.
(Ord. passed 10-20-86)

§ 152.17 MAPS REQUIRED IN APPLICATION.

(A) *Requirement.* A map or maps attached to the application shall include but are not limited to the information set forth in this section.

(B) *Ownership.*

(1) Name, address, and telephone number of legal owner and/or agent of property;

(2) Name, address, and telephone number of professional persons responsible for design and for surveys;

(3) Description of any existing legal rights-of-way or easements affecting the property; and

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

(C) *Description.* Location of property by tax map and parcel number. The warranty deed book number and page reference or other evidence of title of the current owner.

(D) *Features.* Each map shall show the following information:

- (1) The map shall be drawn to a scale of not less than 200 feet to an inch;
- (2) Location sketch map showing relationship of the project site to the surrounding area;
- (3) Graphic scale, date approximate North Arrow, legend;
- (4) The location of property with respect to surrounding property and streets, the names of all adjacent property and streets, or the names of adjacent developments. The name and address of adjacent property owners according to the county tax records;
- (5) Zoning classification of proposed project and adjacent property;
- (6) The location of all boundary lines of the property;
- (7) Approximate total acreage of land in the project in the county, and any other county if applicable;
- (8) The approximate 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;
- (9) The approximate location of water bodies, water courses (including sinkholes, dry stream beds, and pond overflow streams), lands subject to flood, ground water aquifers, springs and other pertinent features;
- (10) The location and width of all existing and proposed street rights-of-way and easements, and other public ways;
- (11) The approximate location, dimensions, and acreage of all property proposed to be set aside for various uses on the applicant's property;
- (12) The approximate location of all test wells and or borings;
- (13) The location of the 100 year flood plain, flood of record, standard project flood, and inundation due to a dam break; and
- (14) The location of faults, dikes, sills, and other pertinent geologic structures.

(E) *Topographic map.* A topographic map with contours at vertical intervals of not more than five feet, at the same scale as the project site map. The date and method of preparing the topographic survey shall be stated.

(F) *Transportation route map.* A map showing proposed transportation routes to and from the facility site, including location of towns and emergency and safety facilities, and an estimate of the volume of material to travel on each route.

(Ord. passed 10-20-86)

§ 152.18 APPLICATION FEES.

(A) All applicants not presently operating in the county requesting a hazardous waste or low-level radioactive waste management permit for storage, transfer, treatment, or disposal shall pay a nonrefundable filing fee to the county in an amount of \$10,000,000 concurrently with filing the application.

(B) All applicants presently operating a hazardous waste or low-level radioactive waste management facility in the county and requesting a waste management permit to continue operations shall pay a nonrefundable filing fee to the county in an amount of \$5,000,000 concurrently with the application.

(C) All applicants presently operating a hazardous waste or low-level radioactive waste management facility in the county and requesting a waste management permit to increase its volume of waste or to accept waste of a significantly different nature shall pay a nonrefundable filing fee to the county in an amount of \$1,000,000 concurrently with the application.

(D) This section is not meant to include those persons temporarily holding wastes and who do not meet the definition of a transfer facility.

(E) Filing fees shall be used to pay in part the cost of administration of the application.
(Ord. passed 10-20-86)

§ 152.19 APPLICATION PROCEDURE.

(A) The applicant shall submit two copies of all information required by federal and state agencies for the facility for which it requests a county permit to the county Waste Board at the same time such information is submitted to the state and the federal government. The review procedure shall not begin nor shall the application be designated as submitted until such time as all required data is submitted and the appropriate fee paid.

(B) The Waste Board shall compile copies of all reports, applications, minutes of planning, and waste board meetings, reports by consultants, and similar material. These shall be placed in one location with free access to the public and the availability of copying any portion or all of any document at cost.

(C) Within 45 days of the submission of the application the Waste Board shall hold a meeting so that the applicant can present its plans and answer questions.

(D) After the hearing, the Waste Board shall have 60 days in which to determine if the application is complete and shall mail notice of its determination to the applicant. If it is not complete the applicant shall have six months to complete the application. If it is not complete within that period, the applicant shall be considered to have withdrawn the application. However, the applicant may at the end of six months make a showing of cause to the Board of Commissioners, and if the Commissioners find that the delay is justified and in good faith, it can grant the applicant a maximum three-month extension.

(E) Each application shall require an analysis conducted by the county staff and a consultant or consultants selected by the Board of Commissioners upon the recommendation of the Waste Board. The normal analysis period is 120 days from the day an application is determined to be complete. In certain instances where the complexity of the application requires more than the usual 120 days, the county staff and/or the consultant may request an additional 60 days from the Board of Commissioners, and the proponent has the option of requesting the Board of Commissioners to extend the analysis period to allow time for responding to staff and/or consultant requests for additional information on a completed application.

(F) The Waste Board at its discretion shall call a public meeting for public comment on the completed application along with the analysis by county staff and consultants. The purpose of this meeting shall be for public review of the application. All known interested persons shall be invited. The staff shall give notice by regular mail of the time and place of the public meeting to the owner and adjacent property owners as specified on the map. Notice shall be mailed not less than 14 days prior to the date specified thereon. Notice of the public meeting shall be posted by the applicant on the proposed facility property on each and every street of access, not less than 14 days prior to the date specified thereon. Posted notices shall be at intervals of not greater than 1,500 feet. Notice shall also be placed by the applicant in each of the county newspapers not less than 14 days prior to the date specified thereon.

(G) Within 45 days after review of the final analysis, completed application, and public comment, the Waste Board shall make a recommendation to the Board of Commissioners at a public meeting whether to accept the application, deny it, or accept it with modifications. This recommendation shall be made to the full commission. However, before making a recommendation to the Board of Commissioners to accept the proposal or accept it with modifications, the Waste Board shall make the following determinations:

(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, demonstrated record of success, 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, and that applicant has demonstrated that it will employ the best management practices in handling the wastes at the proposed facility to achieve the goal of maximizing reuse, recycling, neutralization, detoxification, incineration, and volume reduction before long-term storage;

(5) That the facility operator has undertaken assurance of financial capability for site operations and site closure; and

(6) That the facility operator has undertaken assurance of liability for all sudden and non-sudden accidental damages occurring as a result of site operation.

(H) At its next scheduled meeting, the Board of Commissioners shall make its decision to grant the permit, deny it, or grant it with specified conditions.

(I) A granted permit shall be valid for no more than ten months from the date it is granted by the Board of Commissioners, unless the applicant begins construction of the facility prior to the expiration of the permit and continues to operate the facility according to specified conditions. If a permit becomes invalid and the application is unchanged from when the permit was granted, it shall follow the procedure of this section and the filing fee of § 152.18.

(Ord. passed 10-20-86)

§ 152.20 CONDITIONS ON THE PERMIT.

(A) The Board of Commissioners, upon the recommendation of the Waste Board, may specify conditions on granting a permit, as will, in their opinion, assure that the facility in its proposed location will meet the findings required in § 152.19(H). All such specified conditions shall be entered in the minutes of the meeting at which the permit request is approved. All specified conditions shall run with the permit and shall also be binding on the original applicants and their heirs, successors, and assigns. Any noncompliance with the specified conditions constitutes violation of this chapter and may invalidate the permit.

(B) The Waste Board may recommend that the proposed methods of treatment, handling and/or disposal do not represent the best available technology for treatment or disposal of the waste, or the best management practices with regards to handling the waste, especially where the public and environmental health and safety as well as the cost of post-use clean-up are concerned. In this case, the Board of Commissioners may limit or restrict the amounts and types of wastes entering the proposed site, may limit or restrict the type of treatment, handling and/or disposal activities, or may require additional treatment or handling of the wastes before entering, leaving, or being disposed of on the site.

(C) 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 stored in 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 with the exception of on-site storage at the point of generation.

(3) All wastes, hazardous or low-level radioactive, placed into any form of storage shall be retrievable and identifiable using best management practices.
(Ord. passed 10-20-86) Penalty, see § 152.99

§ 152.21 PROCESSING FEES.

(A) The Board of Commissioners, upon the recommendation of the Waste Board, shall assess permit applicants such fees as the commissioners shall find it necessary and sufficient to reimburse the county for the cost of any needed professional assistance that may be required by the county to evaluate the permit application, verify its contents, and evaluate the impact of such a permit on the community, public health, and the environment. This assistance may include but shall not be limited to the assistance of lawyers, biologists, geologists, engineers, chemists, hydrologists, emergency response, transportation and public health experts, land appraisers, and the services of professional testing laboratories.

(B) Failure to provide these funds shall result in termination of the permit process or cancellation of the permit. The Board of Commissioners may take legal action against the applicant for any costs incurred to the county up to the point of termination.
(Ord. passed 10-20-86)

PRIVILEGE LICENSE TAX

§ 152.35 PURPOSE.

The purpose of this section is to compensate the county, pursuant to the authority vested in the Board of Commissioners by G. S. § 153A-152.1(a), for the costs incurred by the county as a result of the location of hazardous or low-level radioactive waste facilities in the county. In addition, this section is intended to enact and authorize, pursuant to the authority vested in the Board of Commissioners by G.S. §§ 153A-121 and 153A-136, all miscellaneous programs specifically described herein which have not otherwise been enacted or authorized by other sections of this chapter.
(Ord. passed 10-20-86)

§ 152.36 LOSS OF AD VALOREM TAX REVENUES; ADDITIONAL EMERGENCY SERVICES.

(A) The facility operator shall pay the amount of ad valorem taxes to the county which the county would have otherwise received for the facility property, including all buffer zones, for which the county does not collect such taxes. In no case shall this tax be less than the ad valorem tax received by the county for such property prior to the operation of the facility. In addition, the facility operator shall continue to be liable for ad valorem taxes on all equipment, buildings, and personal property owned and operated on the facility site, to the extent that the equipment, buildings, and personal property are taxable under standard county practice.

(B) The facility operator shall pay the following tax for such reasonable expenses that the county incurs 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 such equipment as described in division (B)(1) of this section;

(3) *Evacuation plans.* The cost of preparing, testing, disseminating, and implementing both on-site and off-site emergency evacuation plans, the cost of keeping the 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 situations involving hazardous or low-level radioactive waste, and the cost of expanding such training as necessary;

(5) *Update in training.* The cost of updating training as described in division (B)(4) of this section 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 be agreed upon by the facility operators and the Board of Commissioners, 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 the facilities, for accidents occurring between the site boundary and the county line;

(8) *Post-closure emergency fund.* An additional amount, to be agreed upon by the facility operators and the Board of Commissioners, to purchase insurance to cover the costs of emergency services required to handle emergencies caused by hazardous or low-level radioactive waste facilities after the facilities have closed; and

(9) *Other.* The cost of other emergency services and preparedness which shall be required from time to time.

(Ord. passed 10-20-86)

§ 152.37 MONITORING.

(A) *Purpose.* The purpose of this section 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 the monitoring is in fact carried out. The Board of Commissioners recognize that the state and federal governments have primary responsibility in this area, but it also recognizes that the resources of these governments are limited and that the data generated by this county monitoring program shall supplement and complete the data generated by the state and federal programs.

(B) *Monitoring tax.* The facility operators shall pay a tax to compensate for the monitoring functions undertaken by the county in § 152.76. This tax shall include:

- (1) Salaries of county personnel needed to carry out any of the monitoring functions;
- (2) Administrative support costs which are reasonably necessary to fulfill the duties of the county personnel, to include office supplies, secretarial time, maintenance of a public document room, and other such costs;
- (3) The costs of training, inspection, and monitoring personnel and up-dating such training from time to time, as needed;
- (4) Compensation for the Waste Board;
- (5) Costs incurred in hiring consultants to assist the county in monitoring;
- (6) An additional sum, to be agreed upon by the facility operator and the Board of Commissioners, for maintaining monitoring of the environment and human health effects for a period of not less than 10 years after the closure of the facility. This money shall be placed into a non-reverting fund, with interest to accrue to the fund, which shall be managed by the Finance Officer, who shall give an annual accounting of the fund to the Board of Commissioners; and
- (7) Other reasonable costs of monitoring as may become necessary.

(Ord. passed 10-20-86)

§ 152.38 OTHER COSTS.

(A) *Finding.* The Board of Commissioners finds that the following costs are associated with facilities and their operations and that the County is not otherwise compensated for such costs; and that such costs shall therefore properly be taxed under G.S. § 153A-152.1(a) to the facility operators.

(B) *Recordation.* It should 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 Register of Deeds for placing notations to that effect on all deeds, grants, indexes, plats, and other relevant affected documents shall therefore be taxed to the facility operators.

(C) *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 taxed to the facility operator:

(1) *Consultation with adjoining landowners.* The cost of advising adjoining landowners as to their legal rights with respect to the facility, and as to health precautions;

(2) *Consultation with farmers.* The cost of advising farmers in the surrounding area as to health precautionary measures in the event of accidents or spills for their livestock and crops;

(3) *School educational programs.* The cost incurred, to the extent not already provided for by county or state school budgets, in presenting instructional materials to county school children on the facility, its potential hazards, and emergency preparedness; and

(4) *Health information.* The cost incurred by the county health department in disseminating information concerning the facility and its effect on the public health.

(D) *Construction and maintenance of roads.* To the extent that the county is not otherwise compensated therefor by the federal or state governments, costs incurred in improving or maintaining existing roads and rights-of-way, acquiring new rights-of-way, and constructing access roads, building parking areas, erecting warning signs or signals, and other such expenses as the county can demonstrate are associated with the facility and the increased traffic associated with it shall be taxed to the facility operators.

(E) *Loss of ad valorem taxes.* To the extent that off-site contamination, regardless of negligence on the part of the facility operator, reduces the ad valorem tax revenues to the county, the loss to the county shall be compensated by the facility operator.

(F) *Annual legal advice.* The cost to the county of an annual review of this chapter and other laws and regulations in the field of waste management shall be taxed to the facility operators.

(G) *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 chapter, provided that the county is the prevailing party or the county has had substantial justification for its position and has not litigated vexatiously shall be taxed to the facility operators.

(H) *Bonding.* The cost 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 shall be taxed to the facility operators.
(Ord. passed 10-20-86)

§ 152.39 CALCULATION OF TAX.

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

(B) *Quarterly payments.* The facility operator may arrange for estimated quarterly payments in advance.

(C) *More than one facility.* If there is more than one hazardous or low-level radioactive waste facility in the county, 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, stored, or disposed of in the county for that calendar year.

(D) *Negotiation.* If the facility operator has reason to believe that this tax would prohibit or have the effect of prohibiting the operation or continued operation of the facility, the Board of Commissioners hereby authorize the Waste Board to negotiate the total tax, provided that the agreement must be approved by the Board of Commissioners before becoming final.
(Ord. passed 10-20-86)

§ 152.40 SEVERABILITY OF TAXING PROVISIONS.

If any of the items in this section are determined by a court of competent jurisdiction to be beyond the taxing powers of the county, the decision shall not affect the validity of the remaining portions of this chapter.
(Ord. passed 10-20-86)

WASTE CLEANUP FUND

§ 152.55 PURPOSE.

The Board of Commissioners share the state general assembly's great concern for the safe and effective disposal of hazardous and low-level radioactive waste and has in addition a great concern for the economic and public health costs resulting from inefficient cleanup of past accidents. The Board of Commissioners recognize the benefit of speedy cleanup, manifest in monetary savings, and in the prevention of permanent damage to life and property. The Board of Commissioners also recognize that the cleanup fund established under G.S. § 130-166.19 fully covers on-site cleanup and care and

that the federal response fund established under the Comprehensive Emergency Response, Compensation, and Liability Act, P.L. 96-510, 42 U.S.C. s9601 *et seq.*, is inadequate to insure speedy and adequate compensation, particularly for damages to individuals. The purpose of this subchapter is to establish an emergency response fund, particularly for individual medical and property damages, off-site contamination and transportation accidents, and other costs arising out of the location and operation of hazardous and low-level radioactive waste facilities in the county.

(Ord. passed 10-20-86)

Editor's Note:

G.S. § 130-166.19A has been repealed.

§ 152.56 ESTABLISHMENT.

There is established, pursuant to the authority vested in the Board of Commissioners by G.S. §§ 153A-121 and 153A-152.1, 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. The fund will supplement the state fund established under G.S. § 130-166.19A, and it is the intent of the Board of Commissioners that it should be used first to cover personal injury costs and offsite contamination costs. Should the fund be found to be invalid for whatever reason, the moneys collected and accrued interest shall be returned to the facility operators in the same shares as it was paid in; otherwise, the fund shall be non-reverting.

(Ord. passed 10-20-86)

Editor's Note:

G.S. § 130-166.19A has been repealed.

§ 152.57 COLLECTION.

The privilege license tax collected under this section shall be 2% of the gross annual receipts of all hazardous and low-level radioactive waste facilities in the county, until the principal of the fund shall reach \$25,000,000, with all interest to accrue to the fund.

(Ord. passed 10-20-86)

§ 152.58 MANAGEMENT.

The county Finance Officer and one member of the Board of Commissioners shall be appointed managers of the fund. They shall give an annual accounting of the fund to the Board of Commissioners and to all 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 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 Board of Commissioners that these revenues shall not be invested in securities, obligations, or other instruments of industries which are major producers of hazardous or low-level radioactive waste.

(Ord. passed 10-20-86)

§ 152.59 PROCEDURES AND AUTHORITY FOR DISBURSEMENT.

(A) *Procedures.* County Attorney is directed to draw up a plan and procedures for disbursement, which shall be designed to:

- (1) Insure prompt response to individual claims and clean up actions;
- (2) Insure that all disbursements are made in accordance with state and federal laws; and
- (3) Insure that there is provision for periodic disbursements where the nature of the injury requires them.

(B) *Authority.* The Waste Board, by majority vote, shall be the disbursing authority for payments made from the fund. The Waste Board shall prepare a written report of any meeting at which such vote is taken, including the names of persons voting for and against, amount voted, and reasons. The Board of Commissioners shall review the report at its next meeting.

(Ord. passed 10-20-86)

§ 152.60 COLLECTION OF EXPENDITURES.

The County Attorney shall prepare a plan for collecting expenditures from the fund from parties responsible for discharges requiring such expenditures.

(Ord. passed 10-20-86)

ADMINISTRATION AND ENFORCEMENT

§ 152.75 LIABILITY.

(A) *Definition.* For the purpose of this chapter, the following definition shall apply unless the context clearly indicates or requires a different meaning.

STRICT LIABILITY. Persons storing, transferring, or treating disposing of hazardous waste or low-level radioactive waste shall be liable for all emergency cleanup costs, cleanup costs in general, damages to persons and property, and other costs resulting from discharges or contamination, regardless of fault, or regardless of whether the discharge or contamination was the result of intentional or negligent conduct, accident, or other cause.

(B) *Strict liability imposed.* By the authority vested in them in G.S. §§ 153A-121 and 153A-136, the Board of Commissioners does hereby ordain that all persons storing, treating, or disposing of hazardous waste or low-level radioactive waste in the county shall be held to a standard of strict liability for spills, accidents, contamination, or other discharges and hazards arising from the facility.

(C) *Transportation.* It is further ordained that persons transporting hazardous waste or low-level radioactive waste to destinations in this county shall be held to the same standard of strict liability for all emergency cleanup costs, cleanup costs in general, damages and other costs resulting from discharges or contamination caused by spills or accidents or intentional releases during transportation within the county, or such discharges or contamination occurring while the transportation vehicle is anywhere within the county except within the boundaries of the actual facility site for which it is destined, at which time it shall be considered stored by the facility operator.

(D) *Duration.* It is the intent of the Waste Board that this section shall be temporary in nature, to remain in effect until such time as the general assembly addresses the issue directly, as it is their stated intention to do.

(Ord. passed 10-20-86)

§ 152.76 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.

(B) *Required duties.* Pursuant to the authority vested by G.S. §§ 153A-121, 153A-364, and Chapter 130A, the Health Department is hereby directed to undertake the following monitoring and safety duties:

- (1) To monitor the air, surface water, and ground water during the operation of the facility;
- (2) To monitor soil, plant, microbial, viral, and animal samples during the operation of the facility;
- (3) To conduct human health surveys and monitoring in the area around the facility, including statistical surveys, blood samples, and other methods which may be necessary to determine the effect of exposure to trace and accidental discharges of hazardous and 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 waste facility sites for hazardous, unhealthy, or otherwise unlawful conditions;
- (6) To inspect and take samples within the site boundaries of any hazardous or low-level waste facility 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 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;

(9) To monitor traffic flows near facilities and 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; and

(10) To perform such other duties as the Board of Commissioners or the Waste Board may find necessary from time to time to safeguard the public health and welfare.
(Ord. passed 10-20-86)

(C) *Authority.* In order to carry out the duties specified in division (B) of this section, the Health Department is authorized to do the following:

(1) Immediately upon issuance of the first permit in the county, the Health Department may hire or designate an individual or individuals trained to identify unsafe, unsanitary, or otherwise hazardous conditions in waste facility structures. This building inspector is charged with making periodic inspections for such unsafe, unsanitary, or otherwise hazardous and unlawful conditions during the construction and/or operation of any and all hazardous and/or low level radioactive waste management facilities in the county. The building inspector shall also make unannounced inspections, by presenting his or her credentials at a reasonable hour, when he or she has reason to believe that hazardous or unlawful conditions may exist anywhere in the structure. He or she shall report regularly to the county Waste Board and may request a special session of the body should he or she determine unlawful or hazardous conditions exist.

(2) Immediately upon issuance of the first permit in the county, the Health Department may hire or designate persons capable of performing a background health study on the people of the county and of outlining before the county Waste Board a plan for monitoring the people of the county in order that health effects of any hazardous or low-level radioactive waste management facility in the county could be detected sufficiently early in their development and in order that appropriate legal action could be taken. Personnel and laboratory facilities shall be contracted for by the Board of Commissioners to carry out an approved monitoring program beyond the facilities available to the county through the Health Department. The county Waste Board shall recommend to the Board of Commissioners plans it feels sufficient for this task within six months and the Board of Commissioners shall have one month thereafter to approve the plan and hire the appropriate services.

(3) The Health Department may hire or designate an engineer to review the certificates of need as specified in § 152.77.

(4) The Health Department may hire or designate a chemist or radiation specialist qualified to sample waste at the gate to the facility and to visually inspect the truck, the manifest forms, and a copy of the certificate of need and the condition of the waste before the waste enters the facility. The Board of Commissioners shall provide contract lab services sufficient to analyze the wastes within a four day period from the time of sample collection.

(5) The Health Department may hire or designate an individual or individuals trained to safely handle and sample hazardous waste and low-level radioactive wastes and also to collect and safely handle and transport environmental samples for site monitoring and also for environmental monitoring off-site. This person shall make regular announced and unannounced inspections by presenting his or her credentials at a reasonable hour, for the purpose of collecting such samples as the Health Department, following the recommendations of the county Waste Board, shall deem necessary to adequately monitor the site.

(6) The Health Department is authorized to prepare an emergency response plan and to hire such persons as may be necessary and competent to prepare the plan dealing with health, safety, and environmental cleanup response to an emergency associated with the hazardous or low-level waste facilities.

(7) The Health Department is authorized to hire or designate an emergency medical technician who shall be fully trained to deal with emergency medical situations arising out of the operation of hazardous and low-level radioactive waste facilities and transportation of waste to and from the facilities.

(8) The Health Department is authorized to require from the facility operator a list of trained emergency personnel at the facility, particularly persons trained in emergency response to spills or discharges of ultrahazardous wastes.

(9) The Health Department is authorized to request administrative support from the county, including secretarial time, paper, telephone time, copying, and other support as may be necessary to carry out these functions.

(10) The Health Department is authorized to purchase such equipment as may be necessary to carry out the monitoring and emergency preparedness duties of this section.

(11) The Health Department is authorized to carry out such other duties as it or the Waste Board may find necessary from time to time to insure the public health, safety, and welfare.
(Ord. passed 10-20-86)

§ 152.77 OPERATION; CERTIFICATE OF NEED; MANAGEMENT PRACTICE ORDERS.

(A) Certificate of need.

(1) All persons who operate facilities to handle, treat, transfer, store, or dispose of hazardous or low-level radioactive waste in the county, other than temporary on-site storage at the point of generation, must provide the Waste Board a certificate of need for each shipment of waste. This certificate 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 such efforts at some other waste management facility before shipment to the county. Such persons must also specify how treatment, handling, or disposal in the county fits into a scheme of best available technology for the disposal of the waste. Such persons must also provide information regarding the

condition and contents of the shipment and proper visible labelling of ultra-hazardous wastes on the truck before the shipment enters the county. This certificate must be on file with the county and a reply from the Waste Board must be received by the facility operator before the shipment may enter the county. If the Waste Board finds by majority vote that the shipment of waste does not fit properly into the waste management scheme for which the county facility is permitted, the Waste Board is empowered to deny the shipment admittance to the facility. The facility operator may request a hearing before the Board of Commissioners to challenge the Waste Board's decision. The Board of Commissioners shall schedule a public hearing within ten days to hear the challenge. The facility operator shall have the burden of proof in any such hearing.

(2) All incoming waste must be stored on the facility site in an area utilizing best management practices for the proper storage of the wastes the site is permitted to handle for four days while laboratory analysis is being performed. No waste may be otherwise handled, treated, or disposed of on the site until the laboratory analysis is complete and the chemist verifies in writing to the site manager that the shipment can then be processed.

(B) Management practices orders.

(1) The Waste Board, as described in § 152.03, shall keep abreast of developments in waste management technology and developing management practices.

(2) If the Waste Board discovers a new management practice not currently in use at facilities within the county 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 prepare a report to that effect.

(3) The Waste Board shall include in the report a summary of the benefits and costs of the practice, the wastes affected by the practice, and a proposal for implementing it at facilities within the county. It shall then submit the report to all affected facility operators within the county. The facility operators shall reply in writing to the Waste Board within 45 days, specifying plans to implement the practice or reasons why the facility operator believes the practice should not be implemented.

(4) If after the exchange of reports, the Waste Board, by majority vote, finds that the practice should be implemented at facilities in the county, it shall prepare a report and order to that effect and submit them to the Board of Commissioners. The Board of Commissioners shall approve and publish the order, which shall be effective as an amendment to the permit.

(5) The facility operators may appeal the order within 30 days by so requesting in writing to the Board of Commissioners. The Commissioners shall announce a public hearing within 30 days, at which the Waste Board and the facility operator shall present their cases and at which the facility operator shall be assigned the burden of proof. The Board of Commissioners shall then either reaffirm the order or remit the matter to the Waste Board for further study.

(Ord. passed 10-20-86)

§ 152.99 PENALTY.

(A) Authority, pursuant to the power vested in the Board of Commissioners by G.S. §§ 153A-121 and 153A-123, the County, through its responsible officers, shall enforce the provisions of this chapter to ensure public health, safety, and welfare.

(B) *Violation* 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 chapter and refusal to permit county officials, designated under this chapter, to enter buildings, structures, enclosed areas, or other areas in the performance of their lawful duties, any refusal to pay taxes and fees as provided for by this chapter, and any failure or refusal to provide information as may be required by this chapter upon proper notice shall be a misdemeanor, which may be punished as indicated in § 10.99.

(C) *Every day a separate violation.* Each day of violation of this chapter shall constitute a separate offense.

(D) *Injunctions.* The county may seek injunctions in the appropriate court of competent jurisdiction, when the operation of a hazardous or low-level radioactive waste facility is creating, in the judgment of the Health Department, an imminent hazard to the health, safety, and welfare of the public. The county may also seek any appropriate equitable relief that it deems necessary to ensure the public health and welfare.

(E) *Management practice enforcement.* Any waste facility operator, who having received a final order from the Waste Board to implement a management practice within the time prescribed, shall pay a management practices fee of 10% of the gross receipts taken in by the facility operator for the wastes as are covered by the order. The facility operator shall continue to pay the fee until the time as he or she can satisfactorily demonstrate to the Waste Board that the management practice in question has indeed been implemented.

(F) *Permit revocation.* For any facility operator who has committed a violation as defined in division (B) of this section or for whom the continued operation of the facility poses an unreasonable hazard to the health and welfare of the public, the Waste Board may publicly announce its intention to recommend revocation of its permit. The facility operator may request a hearing, and the Waste Board shall grant such a hearing within ten days of the decision. The facility operator may present evidence to the Waste Board in mitigation to demonstrate subsequent remedial action and the like. If the Waste Board recommends that the permit be revoked, it shall report to the Board of Commissioners in writing. Within 10 days of the receipt of the recommendation, the Board of Commissioners shall hold a public hearing after which they shall continue or revoke the permit. The Board of Commissioners may continue the permit upon finding that:

(1) The facility operator has made a good faith effort to comply with the permit and to remedy violations;

(2) Reinstatement of the permit would not endanger the public health and welfare; and

(3) The facility operator has proposed a plan to remedy any other hazardous conditions on the facility site as expeditiously as possible.
(Ord. passed 10-20-86)

