

HAZARDOUS AND LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT ORDINANCE

WHEREAS, the McDowell County Board of Commissioners finds it necessary and advisable to regulate the location and management of hazardous and low-level radioactive waste management facilities within the jurisdiction of McDowell County in order to protect the health, safety and welfare of its citizens and the peace and dignity of the County and provided in N.C.G.S. 153A-121; and,

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

WHEREAS, when improperly handled, these waste 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 and 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 McDowell County Board of Commissioners, by the authority vested in North Carolina General Statute 153A and 130:

Section 1. Title

This ordinance shall be known and may be cited as the McDowell County Hazardous and Low-Level Radioactive 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 McDowell County.
- B. Assure that hazardous or radioactive waste is not placed into non-retrievable storage in McDowell County.
- C. Assure that before such waste is placed into 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 use 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 704.
- E. Provide that funds are available through levy of a privilege license tax to compensate McDowell County for overseeing the effects of hazardous or low-level radioactive waste in McDowell County.

Section 3. Definitions

Disposal - is defined as the discharge, deposit, injection, dumping, spilling, leaking, or placing of any hazardous and/or low-level radioactive waste into or on any land so that such waste or any constituent thereof may enter the environment or be emitted into the air or discharge into any waters, including ground water.

Facility - is defined as all land, structures, personnel and equipment used for the commercial treatment, storage of more than ninety (90) days, or more than one month in the case of acute hazardous waste, and/or disposal of hazardous and/or low-level radioactive waste whether on site or off site.

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).

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 an 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, disposed of, or otherwise managed.

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.

Storage - is defined as containment for a period of over ninety days (90) (or over one month in the case of acute hazardous waste) in such a manner as not to constitute treatment.

Treatment - is defined as any method, technique or process including neutralization, designed to change the physical, chemical or biological character or composition of any hazardous and/or low-level radioactive waste to neutralize such waste or 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 or low-level radioactive waste so as to render it non-hazardous.

Transfer - is defined as handling significant amount (greater than 1000 kilograms per month) of hazardous waste and/or low-level radioactive wastes that are not generated on site or stored over ninety (90) days.

Hazardous and Low-Level Radioactive Waste Board - refers to the McDowell County Waste Management Board as described in Section 4.

Best Available Technology - is defined as waste management and treatment technology equal in performance to the best treatment technology available in the marketplace, which serves to render the waste to its least harmful form and most reduced volume.

Management Practices - is defined as methods of systematic collection, source separation, storage, transportation, processing, treatment, recovery, and disposal of hazardous and/or low-level radioactive wastes.

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.

On-Site - means the same as defined in 40 CFR, Part 260.

Acute Hazardous Waste - means the same as defined in 40 CFR, Part 261.

Section 4. County Waste Management Board

- A. A McDowell County Waste Management Board shall be formed and shall be composed of 12 members. The Waste Management Board shall be appointed by the Board of Commissioners and shall be constituted as follows:
 1. Five members from government; one from Health Department, one from City of Marion, one from Town of Old Fort, the County Manager or one member of the Board of County Commissioners, and one from an Emergency Management Agency (e.g. fire department).

2. Six members from the following categories: two from the public at large, two representing citizens involved in environmental matters, and two from industry.
 3. One member from a county educational institution (e.g. McDowell Technical College or McDowell Public Schools).
- B. Each member shall serve a three (3) year term, with four (4) of the initial board members serving one (1) year terms, four (4) members serving two (2) year terms, and the remaining four (4) serving for three (3) years so as to stagger the terms. Such initial terms shall be set by the County Commissioners.
- C. The chairperson of the Waste Management Board shall be selected by the Board at its first meeting.
- D. The Waste Management Board shall meet as often as necessary, but at least three (3) times each year, at some central location in McDowell County.
- E. A majority of the Waste Management Board shall constitute a quorum for the transaction of business.
- F. The functions and powers of the Waste Management 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 the 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.
 7. To review the practices of hazardous waste generators and low-level radioactive waste generators in the county, especially those which may not be currently covered by federal and state regulations, to determine if the county

should require these generators to obtain permits for continued production and management of these wastes.

- G. The members of the Waste Management Board shall be compensated at a rate to be determined by the County Commissioners and shall be provided with insurance against liability and/or held harmless for any actions taken in performance of their duties. Compensation may be deferred until an application is filed.

Section 5. Hazardous Waste and Low-Level Radioactive Waste Permit Required

- A. Each facility shall obtain a permit to operate in McDowell County, except generators who store hazardous or low-level radioactive wastes on-site for less than ninety days (90) or acute hazardous wastes for less than thirty days (30). Small generators of hazardous wastes may accumulate one (1) fifty-five gallon (55) drum, in accordance with 40-CFR prior to placing in a storage area.
- B. No construction or site preparation for a new hazardous waste and/or low-level radioactive waste facility shall begin until a permit has been issued by the County Commissioners.
- C. If the County Commissioners find that a permitted facility has significantly changed the amounts or types of waste entering the facility, or that the facility has significantly increased its site, the County Commissioners may require the facility operator to amend its application and obtain a new permit.

Section 6. Application

- A. 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 Commission two (2) 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 appropriate fees are paid, or suitable arrangements for payment have been approved by the Commissioners. Where information required by Paragraphs, A, B, and C of 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.

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

1. A description of the applicant, 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 each facility it or any subsidiary, affiliate or parent corporation has operated at any time within ten years 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 ventures 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 percent (5%) of its outstanding stock, general partners or joint ventures involving:
 - a. 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; or
 - b. Any judicial determination of liability or conviction under any state or federal law or local ordinance relating to waste management or environmental protection; or
 - c. 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 subsidiaries and affiliates including the parent corporation of the applicant within the last ten years.
5. Justification for anticipated community 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 pre-treatment will be required of wastes unacceptable to the facility without such pre-treatment, 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. Each regulated facility shall develop a pre-fire and spill plan and establish emergency procedures. Such plan shall be a description of the facility's plans and procedures for management of fires or spills involving hazardous chemicals. The plan and procedures must be provided to and coordinated with the County Manager's Office, the appropriate Fire Chief, and the County Director of Emergency Services, in addition to those agencies identified in the North Carolina Hazardous Waste Management Rules. Prior to issuance of a County License or Permit, the Director of Emergency Services shall certify to the County Commissioners that the plan and procedures have been satisfactorily completed and coordinated.
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 (5) years.
15. A description of environmental protection measures to be used during transportation of material 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 care.

C. 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 current owner.

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

- a. The map shall be drawn to a scale of not less than two-hundred (200) feet per inch.
- b. A regional location or vicinity sketch map to a scale of not less than one (1) inch to one (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, and the names of all developments located within one (1) mile of the proposed site.
- e. The names and addresses of adjoining property owners according to the County tax records.
- f. The location of all boundary lines of the property.
- g. The total acreage of land in the project in McDowell 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 wells 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:
 - i. The location of faults, dikes and sills;
 - ii. The location, attitude and trend of joints and fractures;
 - iii. The location of present and former borrow pits, mines, shaft adits and quarries;
 - iv. Identification and location of any mineral resources potentially made non-recoverable, by reference to technology then economically feasible, by the proposed facility;
 - v. Identification of bedrock type and strike and dip of any mappable bedding;
 - vi. The depth and degree of weathering (saprolite).
 - vii. Identification and location of clay as to thickness, type and permeability;
 - viii. The location of the water table as to approximate depth, gradient and surface configuration.
4. Topographic Map – A topographic map with contour interval not more than five (5) feet, at the same scale as the project site map. The date and method of preparing the topographic survey shall be stated. This map shall also show:

- a. The location of all boundary lines of the property.
 - b. The approximate location of all test wells and borings.
 - c. The approximate location of water bodies, water courses (including sinkholes, dry stream beds and pond over-flow streams), all land within the 100-year flood plain and other pertinent features.
 - d. The location of all water wells and springs, whether used or unused, of whatever construction, on the property and within 1,000 feet of the perimeter of the property.
5. Transportation Map – A map showing proposed transportation routes to and from the proposed facility, including the location of schools, emergency, law enforcement and hospital facilities in McDowell County and each adjoining county through which a transportation route passes. An estimate of the volume of material to be transported over each route during a specific time frame shall also be given.
- D. Because each facility is unique, the Waste Management Board may require additional information including but not limited to that mentioned below to complete the application.
1. Contaminant flow to water table including lactate 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, based on pre-construction soil borings and groundwater modeling.
 4. Potential effect on surface waters; planned collection systems for surface water run-off; planned exclusion systems for surface water run-on.
 5. Potential effect on aquifers; planned provisions for alternate water supply systems and facilities for immediate pumping and treatment of contaminated water.
 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 wastewater, 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 training 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 owners' exterior property line, referred to as "minimum interior buffer setback"; planned aesthetic design of facility and landscaping, to run concurrent with McDowell 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.
- E. Hazardous and/or low-level radioactive waste generators filing permit applications to store and/or treat wastes on site at the point of generation in excess of 90 days or more than 30 days in case of acute hazardous waste shall submit to the County Commissioners an application.
1. The application shall include the following:
 - a. A copy of all information submitted for state and federal permits.
 - b. A summary of all spills at the site occurring within the last ten years and the resultant cleanup operation.
 - c. A detailed description of the company's in-house monitoring and safety programs.
 - d. Any additional information the Commissioners may deem relevant to assessing the facility's impact on the health and welfare of the county's citizens.
 2. At any time prior to the final determination of the permit application, the Waste Management Board shall have the authority to request the applicant to provide additional information the County Commissioners may deem relevant to assessing the permit application.
 3. The Commissioners or the Waste Management Board, if so directed by the Commissioners, shall hold a public hearing to consider the application within 45 days of receipt, after notice, as specified in Sections 8-C and 8-D. In all cases where the hearing is held by the Waste Management Board, it shall recommend to the Commissioners one of the following courses of action within 30 days of the public hearing
 - a. To grant a permit on the basis of the information submitted.
 - b. To deny a permit on the basis of the information submitted.
 - c. To grant the permit with certain additional conditions.
 - d. To seek further information before taking final action either from the applicant requesting the permit or from independent consultants selected by the Commissioners.

4. If the Commissioners select option d above, the information sought shall be presented to the Waste Management Board at a public hearing within 60 days and the Waste Management 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.
5. In cases where the Commissioners hold a hearing without reference to the Waste Management 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.
6. Existing industries shall apply for this permit within 60 days from the effective date of this ordinance.

Section 7. Application and Processing Fees

- A. All applicants requesting a hazardous or low-level radioactive waste disposal permit shall pay an application-processing fee to McDowell County. The application-processing fee shall be used to reimburse the County for the costs of assessing the environmental and economic impacts 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 professional consultants on a contract basis, including but not limited to the assistance of lawyers, biologists, geologists, engineers, chemists, hydrologists, emergency response and transportation and public health experts, land appraisers, and professional testing laboratories.
- B. No action shall be taken on permit application until the County has received 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
On-Site Storage and 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, 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 within 30 days of final action on the application or retained by the Waste Management Board and/or County Commissioners for community education or other needs.

Section 8. Application Procedure

- A. The permit applicant shall comply with all provisions of Section 6-A.
- B. A designee of the Commissioners shall compile copies of all reports, applications, minutes of Waste Management Board meetings, reports by consultants, and similar material. These shall be placed in one location readily available to the public.
- C. Upon receipt of an application submitted pursuant to this section, the Board of Commissioners may deny the same or refer it to the Waste Management Board. Within 45 days of receipt of the same, the Waste Management Board shall conduct a public meeting. Notice of this meeting shall be advertised in a local newspaper at least 14 days in advance of the meeting. At this meeting the applicant shall present a summary of the application and the public shall have the opportunity to raise questions and concerns. Relevant written and oral questions 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 completed unless this time is extended by the County 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.

Each consultant shall make interim reports on the progress of their analysis of the application to the Waste Management Board at its meetings, and they shall make a final report within 30 days of the completion of the analysis.

- D. Upon receipt of the final report from the Waste Management Board and analyses by consultants, the Commissioners shall call a public hearing on the completed application along with the analysis by consultants. The purpose of this hearing shall be for public review of the application. Notice shall be placed by the County Commissioners in a newspaper of general circulation in the County not less than 14 days prior to the hearing.

- E. Within 30 days after receipt of the final analysis, completed application, and public comment, the Waste Management Board shall make a recommendation to the Commissioners 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 Waste Management Board shall make the following determination:
1. That the construction and operation of the facility will not pose a 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, and that the 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. In the case of generators storing or treating their wastes on site at the point of generation in the county at the time of adoption of this ordinance, these facilities shall be held to the standard of best management practices and may be exempted from the standard of best available technology on that site until such time as they may file a permit application as in 5-C.
 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 compliance with applicable state or federal law or local ordinance relating to waste management and environmental protection.
- F. The Commissioners shall review the recommendation of the Waste Management Board and make their final determination in writing within 30 days of receipt of the recommendation of the Waste Management Board or from the date of the permit decision by state or federal agencies, whichever is latest. The Commissioners shall make the findings listed in E 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.

- G. 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. If a permit becomes invalid for reasons outlined in this paragraph and the applicant wishes to construct or operate the facility, applicant shall follow the procedures set forth in Sections 6 & 8, and pay the filing fee specified in Section 7.

Section 9. Conditions on the Permit

- A. The County Commissioners, upon the recommendation of the Waste Management Board, may specify additional conditions on granting a permit with the objective of assuring that the facility in its proposed location will meet or exceed the findings required in Section 8-E. 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, their heirs, successors and assigns. Any noncompliance with the specified conditions constitutes violation of this ordinance and will invalidate the permit.
- B. In addition to conditions regarding the appropriateness of the proposed waste management scheme and the nature of the waste(s) 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 and/or treatment at the point of generation.
 3. No hazardous or low-level radioactive waste facility may be located within five (5) miles of any public or private school, hospital, or any industry manufacturing medical supplies.
 4. All wastes, hazardous or low-level radioactive, placed into any form of storage shall be retrievable and identifiable using best management practices. The Waste Management Board shall serve in an advisory capacity to the Board of County Commissioners and shall make recommendations to that Board as to what technology represents the best management practices.

Section 10. Monitoring and Safety

- A. The purpose of this section is to supplement and complete the monitoring and safety activities of the federal and state governments. The County 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 have often inadequate, and that county responsibility is therefore necessary and lawful. The duties described herein shall begin upon receipt of a permit application.
- B. Duties of the Waste Management Board (or the Commissioners' designee) shall be to provide, contract, or otherwise secure 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 surveys which may be necessary to determine the effect of exposure to trace any accidental discharges of hazardous or low-level radioactive waste.
 4. To verify the content of shipments and storage of hazardous and/or low-level radioactive waste against shipping manifests and other records.
 5. To inspect the interiors of structures located on the waste facility site for hazardous, unhealthy, or otherwise unlawful conditions.
 6. To inspect and take samples within the site boundaries of any hazardous and/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 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 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.
- C. Authorization of the Waste Management Board: In order to carry out the duties specified in Section 10-B above, the Waste Management Board is authorized to perform the following:
1. Immediately upon issuance of the first permit in McDowell County, the Waste Management Board may hire or designate an individual or individuals trained to identify unsafe, unsanitary, or otherwise hazardous conditions in waste facility structures. This employee 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. This employee may make unannounced inspections.
 2. Immediately upon issuance of the first permit in McDowell County, the Waste Management Board may hire or designate persons capable of performing a background health study on the people of McDowell County and of outlining before the Waste Management Board a plan for monitoring the affected people of McDowell County in order that health effects could be detected sufficiently early in their development and in order that appropriate legal/corrective action could be taken. The Waste Management Board shall recommend to the Board of Commissioners plans it feels sufficient to achieve this task within six months of issuance of the permit to operate and the Board of Commissioners shall have three months thereafter to approve the plan and hire the appropriate services.
 3. The Waste Management Board may hire or designate an engineer to review the disposal requests as specified in Section 11-A.
 4. The Waste Management Board may hire or designate 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 certificate of need and the condition of the waste before the waste enters the facility. The Waste Management Board shall be sufficiently funded to provide contract lab services sufficient to analyze such samples within a forty-eight hour period from the time of sample collection.
 5. The Waste Management Board is authorized to hire or contract 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 facility and transportation of waste to and from such facilities.

6. The Waste Management Board is required to secure from the facility operator a list of trained emergency personnel at the facility, particularly persons trained in emergency response to spills or discharges of ultra hazardous wastes.
 7. The Waste Management Board shall develop annual budgets to be considered by the Board of County Commissioners necessary to provide essential administrative and support staff and other necessary expense items. These costs shall be a part of the privilege license tax.
 8. The Waste Management Board is authorized to purchase such equipment as may be necessary to carry out the monitoring and emergency preparedness duties of this section. These costs are to be incorporated in the Waste Management Board budget.
 9. The Waste Management Board is authorized to prepare and disseminate educational materials and consult with adjoining landowners to the facility, farmers, schools, and other groups, which may be affected concerning health effects of hazardous or low-level radioactive waste.
 10. The Waste Management Board is authorized to carry out such other duties as it may find necessary from time to time to insure the public health, safety, and welfare.
- D. Duties of the County Finance Officer: The county finance officer is directed to arrange suitable bonding, insurance, and other protective measures as described in subsections 12C7, 12C8 and Section 13 below, and to report such arrangements to the County Commissioners.
- E. Duties of County Attorney: The County Attorney is directed to provide legal advice, drafting, and other assistance.
- F. Other duties: The County Commissioners shall direct responsible officials of the county to undertake such other monitoring and safety actions as may be required by this and other sections of this ordinance.

Section 11. Operation

A. Storage and Analysis

1. 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 Waste Management Board may hire or designate a consultant, these costs to be incorporated in the Waste Management Board budget, who may be a chemist or radiation specialist qualified to sample wastes at the gate to the facility or 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 Waste Management Board shall keep abreast of developments in waste management technology and developing management practices. If the Waste Management Board discovers a new management practice, not currently in use at facilities within the 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 prepare a report to that effect. It 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 operator(s) shall reply in writing to the Waste Management 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 Waste Management 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 within 30 days of expiration of time for filing objections. Notice of this hearing shall be as set forth in Section 6. At this hearing, the Waste Management 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 issuance of the proposed order, or remit the matter to the Waste Management Board for further study.

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

Section 12. Privilege License Tax

- A. Purpose: The facility operator(s) shall be assessed a privilege tax for reasonable expenses incurred by the County 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 maintenance and replacement of the equipment as described in subsection 1.
 3. Evacuation Plans: The cost of preparing, testing, disseminating, and implementing both on-site and 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 situations involving hazardous or low-level radioactive waste, and the cost of expanding such training as necessary.
 5. 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.
 6. Transportation Emergency Fund: A 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.
 7. 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.
 8. 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.
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 10. This tax shall include:
 - a. Salaries of County personnel needed to carry out any such monitoring functions.
 - b. Administrative support costs which are 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 maintaining monitoring of 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 Office, who shall give an annual accounting of the fund to the County Commissioners.
 - f. The costs incurred to by and maintain equipment needed for monitoring.
 - g. Other reasonable costs of monitoring as may be necessary.

C. Other Costs: The Board of Commissioners finds that the following costs are associated with hazardous or low-level radioactive waste facilities and their operations, and that the county is not otherwise compensated for such costs; and that such costs shall therefore properly be assessed under North Carolina General Statute 153A-152.1(a) to the facility operator(s), and are to also be made a part of the privilege license tax:

1. Recordation: It shall be a matter of public record that property is located within a ten (10) 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 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 landowners within a ten (10) mile radius, including adjoining, as to their legal rights with respect to the facility, and as to health precautions.
 - b. **Consultation with Farmers:** The cost of advising farmers within a twenty-five (25) mile radius as to health precautionary measures for their livestock 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 materials to county school children on the facility, its potential hazards, and emergency preparedness.
 - d. **Health Information:** Costs 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 maintaining existing roads and rights-of-way, 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 property value is reduced due to presence of the facility or that off-site contamination, regardless of negligence on the part of the facility operator, reduces Ad Valorem revenue 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 ordinances 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. Tax Calculations:

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 shall 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 the 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 treated or disposed of in the county for this calendar year.
4. Negotiation: Should the facility operator(s) have reason to believe that this privilege license tax would prohibit or have the effect of prohibiting the continued operation of the facility(s), he or she shall specify in writing in a report to the Waste Management Board, setting forth the grounds for such belief with particularity, and stating the level of tax which would enable such operation. The Waste Management Board is empowered to negotiate the total tax, provided:
 - a. That all such negotiations shall include at least one public meeting, and
 - b. That any decision be reported in writing to the County Commissioners, with the reason(s) therefore,
 - c. That such agreement must be approved by the County Commissioners before becoming final,
 - d. That the original tax and the negotiated tax be made public, and
 - e. That such an agreement must be renegotiated each year.

Section 13. Enforcement

- A. In General: Pursuant to the power vested in the County Commissioners by North Carolina General Statutes 153A-121, 153A-123, and 143B-216.10, the County through its responsible officers shall enforce the provisions of this ordinance to ensure and safeguard the 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 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, any refusal to pay taxes and fees as provided for by this ordinance, and any failure or refusal 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 Title 14 of the General Statutes of North Carolina.
- C. Every Day A Separate Violation: Each day of violation of this ordinance shall constitute a separate offense. In addition, any person violating this ordinance shall be liable for all costs incurred by the County in enforcing its provisions.
- D. Injunction: 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, in the judgment of the health department, creating any 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 County Commissioners to implement a management practice as described in Section 11, fails to implement such a practice within the time prescribed, shall pay a management practices fee of ten percent (10%) of the gross receipts accepted by such facility operator for such wastes as are covered by the order. The facility operator shall continue to pay such fee until such time as he can satisfactorily demonstrate to the Waste Management 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 Section 14-B above, or for whom the continued operation of the facility poses a hazard to the health and welfare of the public, the Waste Management Board may publicly announce its intention to recommend revocation of the facility's permit. The facility operator may request a hearing, and the Waste Management Board shall grant such a hearing within ten (10) days of the decision. The facility operator may present evidence to the Waste Management

Board in mitigation, to demonstrate subsequent remedial action, etc. If the Waste Management Board recommends that the permit be revoked, it shall so report to the Board of Commissioners in writing. Within ten (10) days of the receipt of the recommendation, the County 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 (1) that the facility operator has made a good faith effort to comply with the permit and to remedy violations, (2) that 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.

Section 14. Severability

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason invalid or unconstitutional as determined by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 15. Effective Date

This ordinance shall be effective from the date of its passage, March 7th, 1988.

s/Jack A. Wood
Chairman of the Board of
Commissioners of
McDowell County, NC

s/Carrie Padgett
Clerk to the Board of
Commissioners
McDowell County, NC