

## ORDINANCE NO. 34

## CASWELL COUNTY EXPLOSIVE MATERIALS MANAGEMENT ORDINANCE

WHEREAS, the Caswell County Board of Commissioners finds it necessary and advisable to regulate the location, management and operation of businesses/facilities that use, process, manufacture, store or distribute explosive materials within the jurisdiction of Caswell County in order to protect the health, safety and welfare of its citizens, and the peace and dignity of the county as provided in N.C.G.S. 153A-121 and 128; and

WHEREAS, the safe management of explosive materials are essential to the health, safety, and welfare of Caswell County Citizens; and

WHEREAS, when improperly used, processed, manufactured, stored or distributed explosive materials pose a threat to water, land and air resources of Caswell County, as well as to the health and safety of its citizens;

NOW, THEREFORE, be it ordained by the Caswell County Board of Commissioners, by the authority vested in them by divisions of North Carolina General Statutes Section 153A-121 and 128;

SECTION 1. Title and Purpose

(a) This Ordinance shall be known as the Caswell County Explosive Materials Management Ordinance. The Board of Commissioners of Caswell County hereby declare that the safe management of explosive materials is necessary for the protection of the health, safety and welfare of the citizens of Caswell County and for the protection of designated watersheds areas. It is the purpose of this Ordinance:

- (1) To prohibit the location of businesses/facilities in any designated watershed or watershed critical areas (as defined in Section 2 of this ordinance) which use, process, manufacture, store or distribute more than ten thousand (10,000) pounds of explosive materials and have that quantity on site at any one time;
- (2) To allow the location of new businesses/facilities in Caswell County, other than those in designated watershed or watershed critical areas, which use, process, manufacture, store or distribute more than ten thousand (10,000) pounds of explosive materials on site at all times, after obtaining an Explosive Materials Permit;

- (3) To allow any existing business/facility currently located in Caswell County which use, process, manufacture, store or distribute less than ten thousand (10,000) pounds of explosive materials at any given time to continue its operation without the necessity of having to obtain an Explosive Materials Permit or comply with the requirements of this Ordinance.

- (4) To allow any business/facility or agricultural operation that use, process, manufacture, store or distribute explosive materials solely for agricultural purposes to operate without the necessity of having to obtain an Explosives Material Permit or comply with the requirements of this ordinance;

- (5) To ensure that explosive materials businesses/facilities located in Caswell County are managed in a manner consistent with the promotion of health, safety and welfare of its citizens;

(6) To ensure that all applicants seeking to obtain an Explosive Materials Permit shall pay Caswell County an application fee set by the Board of Commissioners of Caswell County;

(7) To ensure that funds are available through an annual permit fee and any other fees assess by the Board of Commissioners to compensate and reimburse Caswell County for the additional costs associated with regulating such business/facility to protect the health, safety and welfare of its citizens.

(b) It is the intent of Caswell County to exercise supplemental local jurisdiction over the stated businesses/facilities in a manner consistent with current federal and state and pursuant to the power vested in it by the provisions of North Carolina General Statutes Sections 153A-121 and 128, 62-21, 20-167 and 143-214.5

**SECTION 2. Definitions**

(a) Definitions contained in the "North Carolina Fire Prevention Code Volume 5", as amended, and the regulations promulgated pursuant to that code are hereby adopted by reference and incorporated herein as if fully set forth.

(b) "Business" means any facility where explosive materials will be used, processed, manufactured, stored or distributed other than for agricultural purposes.

(c) "Distribute" means to sell, issue, give, transfer, or otherwise dispose of a product for the purpose of explosion. The term does not include a mere change of possession from a person to his agent or employee in connection with the agency or employment.

(d) "Watershed" means the entire land area contributing surface drainage to a specific point.

(e) "Watershed Critical Area" means the area adjacent to a water supply intake or reservoir where risk associate with pollution is greater than from the remaining portions of the watershed. The critical area is defined as extending either 1/2 mile from the normal pool elevation of the reservoir in which the intake is located or to the ridgeline of the watershed (whichever is closer to the reservoir).

(f) "Facility" means all contiguous land and structures, other appurtenances and improvements on the land for the use of, processing manufacturing, storing, distributing or transporting explosive materials.

(g) "Storage or to store" means the temporary or permanent holding of explosive materials.

(h) "Fire Code Official" means Caswell County Fire Official, as set out in the Caswell County Fire Prevention Code (Ordinance No. 31).

(i) "Explosive Materials" means explosives, blasting agents, water gels and detonators, individually and collectively.

(j) "Blasting Agents" means any material or mixture consisting of a fuel and oxidizer intended for blasting or otherwise classified as an explosive which none of the ingredients are classified as explosives, provided that the finished product, as mixed and packaged for use or shipment, cannot be detonated by means of a No. 8 test blasting cap when unconfined. Materials or mixtures classified as nitrocarbonitrates by the Department of Transportation regulations shall be included in this definition.

(k) "Explosives" means any substance, or combination of substances, commonly used for the purpose of detonation and which, upon exposure to any external force or condition, is capable of a relatively instantaneous release of gas and heat. The term "explosives" shall include all materials classified as Class A, Class B, or Class C explosives by the Department of Transportation (DOT) regulations, and includes, but is not limited to, dynamite, black powder, pellet powders, initiating explosives, blasting caps, electric blasting caps, safety fuse, fuse igniters, fuse lighters, squibs, cordeau detonant fuse, instantaneous fuse, igniter cord and igniters, small arms ammunition, small arms ammunition primers, smokeless propellant, cartridges for propellant-actuated powder devices and cartridges for industrial guns, pyrotechnics, water gels and any material designated as an explosive by the State Fire Marshal, and term "explosives" shall exclude ammonium nitrate when such is used, processed, manufactured, stored or distributed for agricultural purposes such as fertilizer.

(l) "Detonator" means any device containing a detonating charge that is used for initiating detonation in an explosive. The term includes, but is not limited to, electric blasting caps of instantaneous and delay types, blasting caps for use with safety fuses, detonating cord delay connectors, and nonelectric instantaneous and delay blasting caps.

(m) "Water gels" means explosives or blasting agents that contain a substantial proportion of water.

**SECTION 3. Applicability**

(a) Any business/facility that use, process, manufacture, store or distribute explosive materials including ammonium nitrate solely for agricultural purposes shall be exempt from the requirements of this ordinance.

(b) Any Businesses/facilities which in its normal course of operation, use, process, manufacture, store or distribute less than ten thousand (10,000) pounds of explosive materials collectively shall be exempt from the requirements of this Ordinance.

(c) Any chemical, material or substance used by a governmental agency for the protection of the integrity of public drinking water shall be exempt from the requirements of this Ordinance.

(d) Any business/facility which in its normal course of operation, use, process, manufacture, store or distribute more than ten thousand (10,000) pounds of explosive materials collectively and have that quantity on site at any one time shall be prohibited within designated watershed and watershed critical areas.

(e) Any business/facility which in its normal course of operation, use, process, manufacture, store or distribute more than ten thousand (10,000) pounds of explosive materials collectively and have that quantity on site at any one time may locate and operate outside designated watershed and watershed critical areas after obtaining an Explosive Materials Permit and complying with the other requirements of the ordinance.

(f) For the purpose of this Ordinance, calculations of the number of pounds of explosive materials shall be as follows:

(1) The calculations shall include the sum of all explosive materials (as defined by Section 2 of this ordinance) individually and collectively.

(2) A mixture, solution and/or compound shall be calculated using percentages of all explosive materials (as defined by Section 2 of this ordinance), that are stored or

distributed at any business/facility. Example: A company having 25,000 pounds of a mixture or solution which is 25% potassium chlorate and 25% mercury fulminate would perform the following calculation:

$0.25 \times 25,000 \text{ lbs.} = 6,250 \text{ lbs.}$

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12,500 lbs. explosive materials

**SECTION 4. Application Procedure and Applicable Fees**

(a) Application for an Explosive Materials Permit and subsequent annual permit renewals shall be submitted to the Caswell County Building Inspector's Office and the issuance of such permit shall be from the Caswell County Building Inspector's Office.

(b) Applicants requesting an initial Explosive Materials Permit shall pay to Caswell County an application fee of \$25,000.00. Annual renewal permits shall be assessed a processing fee of \$15,000.00.

(c) In addition to the application fee and annual renewal permit fees required by paragraph (b) above, the Board of Commissioners of Caswell County, shall from time to time assess applicant's fees in such amounts as the Commissioners shall find 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 and amendments, annual renewal permits, verify permit application content 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, experts, land appraisers and professional testing laboratories.

(d) All explosive material permits issued under these provisions shall be for one year which shall be for the fiscal year beginning July 1st and ending June 30th. Explosive material permits issued within a fiscal year shall only be for the period beginning on the date such permit is issued and ending the following June 30th.

(e) A copy of the business'/facility's completed annual report shall be submitted to the Caswell County Building Inspector's Office concurrently when submitting the initial permit application and also when submitting for each annual renewal permit.

(f) Failure to provide the funds required hereby within 30 days of demand shall result in termination of the permit process or cancellation of the permit. The Caswell County Board of Commissioners may take legal action against the applicant for any cost incurred to the County up to the point of denial or termination.

(g) Applicants requesting an Explosive Materials Permit shall submit the following information:

(1) The name and address of the owner(s) and operator(s) of the business/facility and the history of the owner's and operator's past activities involving the management of explosive materials, including but not limited to, experience with particular explosive materials and environmental history including spills, releases or environmental penalties at other businesses/facilities operated by the owner(s) or operator(s), its affiliates, subsidiaries or parent.

(2) A list of all explosive materials, mixtures and/or compounds used, processed, manufactured, stored or distributed; and the purpose(s) for which each are to be used, including the following information on all businesses/facilities:

- a. Maximum volume on site at any one time (in weight or quantity);
- b. Storage vessels, (including type, size, and location);
- c. Containment devices, (including volume, location, design and type of material);
- d. Total volume of explosive materials (in weight or quantity) and the calculations used to determine this total.

(3) The names, addresses and telephone numbers of designated responsible parties to be contacted for further information or in the event of an emergency during the operation of the business/facility. It is the responsibility of the applicant to keep such information current by notifying the Caswell County Fire Code Official of any changes.

(4) Transportation Route Map: A map showing proposed transportation route(s) to and from the business/facility site, including location of towns and emergency and safety facilities, and an estimate of the volume of material to travel on each route.

(5) A description of emergency procedures and safety and security precautions that will be in place at the business/facility.

(6) A description of the environmental protection measures to be taken by the applicant to prevent contamination on and around the business/facility site and a description of planned monitoring systems, with an estimated annual budget for each of these items.

(7) A description of environmental protection measures to be used during transportation of materials to and from the business/facility, with an estimated annual budget for these arrangements and estimate of the volume of material to be transported during each year of the business/facility's operation.

(8) A detailed list of all state and federal permits needed by the applicant in order to construct and operate a business/facility as defined by this Ordinance and a status report on the permit process being undertaken by the applicant for each needed permit.

(9) Detailed plans regarding the applicant's needs for fire protection and any and all equipment or improvements the applicant proposes to construct on the site for fire protection and fire prevention.

(10) Documentation of the state's fire protection and fire prevention requirements of the applicant and its activities and listing any additional equipment or improvement that will be required to be furnished either by the applicant or by public fire departments serving the site.

(11) An Emergency Response Plan outlining the actions of the business/facility in responding to emergency spills or releases. This plan shall include, but not be limited to, business/facility evacuation procedures, a list of emergency equipment available at the business/facility, special firefighting equipment or materials necessary to properly contain the released or spilled explosive materials.

(12) Evidence of liability insurance covering bodily injury and property damage to third parties caused by accidental occurrences or negligence of at least \$10,000,000.00 per occurrence with an annual aggregate of at least \$30,000,000.00.

#### **SECTION 5. Minimum Requirements**

An applicant for an explosive materials permit must satisfy the following minimum requirements:

(a) All businesses/facilities shall place all containers and tanks used for storing explosive materials into designated segregated storage locations and a list on such containers/tanks the name and type of explosive material(s) contained in such containers/tanks.

(b) All containment systems for businesses/facilities must be surrounded by walls, fences or other artificial barriers at least seven feet in height. The entrance to these containment systems must be controlled at all times and shall bear a placard readily apparent to all parties entering the containment system stating in bold letters "DANGER-EXPLOSIVE MATERIALS-UNAUTHORIZED PERSONNEL KEEP OUT."

(c) The Emergency Response Plan as described in Section 4 of this Ordinance shall be implemented and kept current.

(d) The business/facility shall post a placard in a prominent location within the business/facility which lists the emergency numbers of appropriate emergency response agencies to be notified in case of accidental release of explosive materials and such information shall be kept current and be furnished to both the County Manager and Fire Code Official of Caswell County.

(e) Storage of explosive materials shall be above ground and in a manner consistent with applicable state and/or federal regulations covering each specific stored material.

#### **SECTION 6. Enforcement and Penalties**

(a) In general: Pursuant to the power vested in the County by N.C.G.S. Section 153A-121 and 128, the County through its responsible officers shall enforce the provisions of this Ordinance to ensure and safeguard the health, safety and welfare of its citizens.

(b) Failure to correct a violation within the time specified in the compliance order issued by the appropriate state, federal, or county agency may result in revocation of the permitted use status.

(c) Pursuant to the provisions of N.C.G.S. 153A-123(a), any person violating any provision of this Ordinance may be subject to a civil penalty. The civil penalty shall be a payment of up to \$5,000.00 per day. Each day's violation shall be treated as a separate offense.

(d) Pursuant to the provisions of N.C.G.S. 153A-123(c), the County may file a civil action to recover said penalty if the offender does not pay said penalty.

(e) Pursuant to the provisions of N.C.G.S. 153A-123(d), the County may also seek any appropriate equitable relief that it deems necessary to ensure the health, safety and welfare of the citizens or the natural resources of the County, including but not limited to civil damages resulting from violation of this Ordinance.

(f) Pursuant to the provisions of N.C.G.S. 153A-123(a), the County may seek an injunction when, in the judgment of County, the business/facility is creating an imminent hazard to the health, safety, and welfare of the public.

(g) If any person, business/facility shall violate any provision of this Ordinance, he shall be guilty of a misdemeanor and shall be fined not more than \$500.00 or imprisoned for not more than thirty (30) days, as provided by N.C.G.S. 14-4. Each calendar day during which a violation continues shall constitute a separate offense.

(h) This Ordinance shall be enforced concurrently by the Caswell County Building Inspector, the Caswell County Health Department, and the Caswell County Fire Code Official. Any appeal from any order, decision, or determination by the aforementioned enforcement entities shall be to the Caswell County Board of Commissioners by filing a written notice with the Clerk of the Board of Commissioners within ten (10) days after the order, decision, or determination.

(i) Where any waivers or modifications of this Ordinance, or any other applicable Caswell County Ordinance are sought by the applicant because strict compliance with the provisions of this Ordinance would cause an unusual and unnecessary hardship, the Caswell County Board of Commissioners may within its sole discretion vary the requirements set forth herein. In granting any waiver or modification, the Caswell County Board of Commissioners shall require such conditions as will secure, insofar as practicable, the objectives of the requirements waived or modified. Any waiver or modification authorized shall be entered in the Minutes of the Caswell County Board of Commissioners together with the circumstances that justified said waiver or modification, and any conditions upon which the same were granted.

#### SECTION 7.

##### Revocation of Explosive Materials Permit

(a) Any explosive materials permit issued for the use, processing, manufacturing, storage or distribution of explosive material may be revoked by the Caswell County Building Inspector's Office and/or the Board of Commissioners.

(b) Whenever, upon inspection of businesses/facilities, equipment, operating methods, or practices of any business/facility, permitted to store or distribute explosive materials in Caswell County, the Caswell County Building Inspector's Office, the Caswell County Health Department, or the Caswell County Fire Code Official finds that conditions or practices exist which are not in compliance with these regulations, written notice will be given in said enforcing entity or entities, which are not in conditions or practices are corrected or remedied that unless days, the permit may be revoked. Notice shall include the date, time, and place of reinspection by the Caswell County Building Inspector's Office, the Caswell County Health Department or the Caswell County Fire Code Official.

(c) If, after reinspection, the Caswell County Building Inspector's Office, the Caswell County Health Department or the Caswell County Fire Code Official find conditions or practices not corrected, the permittee shall be notified by certified mail to cease and desist all activities until the violations are corrected.

The cease and desist order shall give notice to appear before the Board of County Commissioners to show cause why the permit should not be revoked. The Board of County Commissioners may revoke the permit, leave it in effect, or add other conditions as it deems necessary.

(d) Revocation of any federal or state permit automatically revokes the permit issued under this Ordinance.

(e) If there occurs any substantial deviation from the permit issued herein or any revision or substantial modification of any applicable federal or state permit that regulates any of the activities covered by this Ordinance, the applicant shall reapply for a new explosive materials permit under this Ordinance and the permittee shall have thirty (30) days from such substantial deviation, revision or substantial modification of the applicable federal or state permit in which to reapply for a new explosive materials permit. If reapplication is not made within thirty (30) days, the Caswell County Board of Commissioners may, but is not required to, extend the existing explosive materials permit pending action on the new application.

**SECTION 8. Liability**

All businesses/facilities which this Ordinance is applicable to shall maintain the following liability requirements:

(a) Liability insurance coverage for bodily injury and property damage to third parties caused by accidental occurrences or negligence in an amount of at least \$10,000,000.00 per occurrence with an aggregate amount of at least \$30,000,000.00.

(b) In addition to the coverage required in the preceding paragraph (a) all permittees shall be responsible for all emergency clean-up costs, clean-up 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 of contamination was the result of intentional or negligent conduct, accident, or other cause.

(c) There shall be no limitation to the dollar amount of liability.

**SECTION 9. Other Codes**

All businesses/facilities shall comply with all other applicable sections of the Caswell County Fire Code.

**SECTION 10. Severability**

It is hereby declared that the sections, paragraphs, sentences, clauses and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph or section of this Ordinance shall be declared unconstitutional or invalid by a judgment or decree of any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Ordinance.

**SECTION 11. Effective Date**


This Ordinance shall be effective from the date of its passage.



Adopted this the 11th day of February, 1992.

  
W. Conway Moorefield  
Chairman, Board of Commissioners

Attested:

By:   
Wanda P. Smith  
Clerk to the Board  
(SEAL)