

ORDINANCE NO. 48

DISPOSAL OF VIRGIN AND/OR ANY OTHER
PETROLEUM CONTAMINATED SOIL

WHEREAS, The Caswell County Board of Commissioners finds it necessary and advisable to regulate the location, management and disposal of petroleum contaminated soil 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 North Carolina General Statute §153A-121 to insure that petroleum contaminated soil will be managed in a safe and approved manner; and

WHEREAS, the safe and proper remediation of petroleum contaminated soil within the boundaries of Caswell County is essential to the public health and safety; and

WHEREAS, when petroleum contaminated soil is improperly exposed, improperly handled, or disposed of, it poses a threat to the water, land and air resources of the County, as well as to the health and safety of its citizens; and

NOW, THEREFORE, be it ordained by the Caswell County Board of Commissioners by the authority vested in it by North Carolina General Statute §153A-121;

SECTION 1. TITLE:

This ordinance shall be known and may be cited as "DISPOSAL OF VIRGIN AND/OR ANY OTHER PETROLEUM CONTAMINATED SOIL."

SECTION 2. PURPOSE:

THE PURPOSE OF THIS ORDINANCE IS TO:

- (a) Regulate the cleanup of sites containing underground storage tanks which have contained petroleum products or any other material that remains, or waste of which are, or may contaminate the soil with petroleum hydrocarbons above acceptable levels; and
- (b) Regulate the technique of treating and disposing of petroleum contaminated soil.

SECTION 3. DEFINITIONS:

Board of Commissioners means the Caswell County Board of Commissioners or its official representatives.

County means Caswell County, North Carolina.

County Manager means the manager of Caswell County or his/her authorized representative.

D.E.M. means the Division of Environmental Management within the Department of Environment, Health and Natural Resources of the State of North Carolina.

Generator means the source of the petroleum contaminated soil whether public or private.

Land Farming means that method of removing petroleum compounds from soils; that method of depositing soil contaminated with petroleum hydrocarbons from other soil and exposing the same to such a combination of air, light and nutrients as will result in petroleum hydrocarbons being destroyed by naturally occurring micro-organisms.

Landowner means any person, firm, corporation, partnership, association or entity upon whose land contaminated soil is placed.

Permittee means any person, firm, corporation, partnership, association, or entity transporting and/or disposing of petroleum contaminated soil in Caswell County by any means.

Person means any and all persons; including individuals, firms, partnerships, associations, public or private institutions, municipalities or political subdivisions, governmental agencies or private or public corporations organized or existing under the laws of this state or of other state or county.

Petroleum contaminated soil means any soil that has been exposed to petroleum products because of any emission, spillage, leakage, pumping, pouring, emptying, or dumping of petroleum products onto or beneath the land surface and that exhibits characteristics or concentrations of typical petroleum product constituents in sufficient quantities as to be detectable by compatible laboratory analytical procedures.

Petroleum product means all petroleum products as defined by G.S. §143-215.94A(7) and includes motor gasoline, aviation gasoline, gasohol, jet fuels, kerosene, diesel fuel, fuel oils (#1-#6), and motor oils (new and used).

Remediation means the process of cleaning up contamination.

SECTION 4. SCOPE:

No person shall make application to any land within the geographic boundaries of Caswell County, or otherwise dispose of petroleum contaminated soil contrary to the provisions of this Ordinance.

SECTION 5. CONFLICT WITH OTHER LAWS AND REGULATIONS:

The provisions of any federal or state law or regulation establishing standards affording greater protection to the public welfare, safety and health shall prevail within the jurisdiction of such agency over standards established by these regulations.

SECTION 6. REQUIREMENTS FOR DISPOSAL OF VIRGIN AND/OR ANY OTHER PETROLEUM CONTAMINATED SOIL IN CASWELL COUNTY:

A. Any person desiring to apply petroleum contaminated soil to any land within the County shall first obtain a permit governing the petroleum contaminated soil from D.E.M.

B. Applicants for a County permit to dispose of petroleum contaminated soil shall file with the Caswell County Manager all related documents submitted to the United States Government and to the State of North Carolina including the following:

- (1) A valid permit to dispose of virgin petroleum contaminated soil issued by the State of North Carolina;
- (2) Number of acres to be used by the disposal site, location of site, and if not owned by applicant a copy of the lease agreement;
- (3) The name of the corporation, including the officers, directors, stockholders and their addresses;
- (4) Proof of the applicant's financial responsibility. If in the opinion of the Board of Commissioners, the applicant's financial

responsibility has not been demonstrated, a bond may be required not to expire earlier than five (5) years after the last application or disposal of petroleum contaminated soil to the site in question to correct any problem that may arise as a result of the disposal of petroleum contaminated soil;

(5) A copy of all laboratory analysis concerning the petroleum contaminated soil and site where the petroleum contaminated soil originated as required by the D.E.M.; and

(6) Copies of all laboratory analysis concerning the site where application is to occur including analysis of plants, plants material, soil, surface water and groundwater as required by the D.E.M.

C. Any person applying for a permit from Caswell County to dispose of virgin and/or any other petroleum contaminated soil shall pay either by cash or certified check to accompany the application the amount of \$250.00 per site acre, of which no part is refundable.

D. Applicants granted a permit from Caswell County to dispose of virgin and/or any other petroleum contaminated soil shall adhere to the following conditions:

(1) Any load of petroleum contaminated soil which contains liquids, concrete, metal, plastic, rock, wood or any other type of demolition debris shall not be disposed of in Caswell County and shall be returned to the generator.

(2) Any load of petroleum contaminated soil may be randomly sampled at the disposal site by the County Manager or his/her authorized representative. Any random sample taken will be forwarded to a private certified lab by the County Manager or his/her authorized representative and the analysis forwarded to the County Manager or his/her authorized representative from the certified lab. The cost of the analysis shall be borne by the permittee and shall be paid upon the request of the County Manager or his/her authorized representative.

(3) A job ticket for each job shall be provided to the County Manager or his/her authorized representative at the time of taking the samples as set out in the preceding paragraph (sub-paragraph 2 of paragraph D of this Section. Said job ticket shall contain the minimum following information:

(a) Generator's name, mailing address, and telephone;

(b) Transporter's company name, mailing address, and telephone;

(c) Permittee acknowledgment of receipt of petroleum contaminated soil to be un-loaded and origin of such soil;

(d) Number of truck loads and tonnage; and

(e) Copy of the generator lab analysis of the material to be off loaded;

(4) The permittee shall notify the County Manager or his/her authorized representative forty-eight (48) hours prior to the arrival of the petroleum contaminated soil.

(5) A grid shall be prepared of the disposal area. Each grid section shall contain no area larger than one acre and shall be marked with permanent corner markers and labeled with weather proof identification. The permittee shall notify the County Manager or his/her authorized representative within ninety-six (96) hours of the placement of the petroleum contaminated soil by the operator job number and where placed by grid number or section.

(6) The unloading of any petroleum contaminated soil shall be between the hours of 9:00 A.M. and 3:00 P.M. and limited to Monday and Thursday (days of week), unless otherwise authorized from the County Manager or his/her authorized representative.

(7) Each load of petroleum contaminated soil shall be kept covered by a waterproof covering and no unloading shall be permitted in inclement weather.

(8) The County Manager or his/her authorized representative shall be allowed to inspect permittee's disposal facilities or the disposal site during normal working hours.

(10) Any petroleum contaminated soil which does not meet the criteria established by the permit issued by the State of North Carolina (D.E.M.) for virgin petroleum contaminated soil and/or the requirements of this Ordinance shall be removed along with all petroleum contaminated soil located within the designated grid(s) area where said soil was disposed. If any petroleum contaminated soil does not meet the criteria established by the State of North Carolina (D.E.M.) no further petroleum contaminated soil shall be accepted or unloaded at the disposal site until the petroleum contaminated soil not meeting the criteria established by the State of North Carolina (D.E.M.) is removed from the disposal site.

(11) The permittee shall pay to the County Manager or his/her authorized representative a fee of \$100.00 per day or each portion thereof for the collection of random samples as set forth in paragraph 2 of this section.

(12) The permittee shall pay to the County Manager or his/her authorized representative an annual inspection fee of \$200.00 on or before the first (1st) day of each July during continuation of the permit.

(13) All copies of documents and reports forwarded to the United States Government and the State of North Carolina (D.E.M.) shall also be forwarded to the County Manager while the permit from the State of North Carolina is in

effect.

(14) The person applying petroleum contaminated soil must have general liability insurance in the amount of at least \$1,000,000.00, insuring against any negligent act of the person or his agents in the application of the petroleum contaminated soil.

(15) Any person owing property upon which petroleum contaminated soil is applied, must record documentation such as a notice signed by the land owner with the Caswell County Register of Deeds indicating the property owner and a legal description of the property where the petroleum contaminated soil has been applied.

(16) No petroleum contaminated soil shall be applied to any land located within the Watershed Area Boundaries as designated in the Caswell County Watershed Protection Ordinance.

(17) No petroleum contaminated soil shall be disposed in any form or fashion closer than:

- (a) 500 feet from any public or private water supply including wells;
- (b) 250 feet from any stream, lake, river or natural drainage way;
- (c) 100 feet from any property line.
- (d) 500 feet from any residence, school, hospital, playground or recreational park area; and
- (e) Within the critical area of a drinking water supply reservoir. The critical area of a drinking water supply reservoir is defined as extending either one-half (½) mile from the normal pool elevation of the reservoir in which the water intake is located or to the ridge line of the watershed (whichever comes first); or one-half (½) mile upstream from and draining to the intake (or other appropriate downstream location associated with the water supply) located directly in the stream or river (run-of-the-river), or to the ridge line of the watershed (whichever comes first).

SECTION 6. ENFORCEMENT.

All persons who shall own, lease or have possession of any property from which petroleum contaminated soil is located, or who have any interest in such property, or who shall be the agent, employee or contractor of such person prior to engaging in the disposal of petroleum contaminated soil in Caswell County shall:

(a) Comply with all provisions of Article 21 - Chapter 143 of the General Statutes of North Carolina as amended and other applicable provisions, rules and regulations promulgated thereunder as they now exist and are hereinafter amended.

(b) Comply with the provisions of all permits that may be issued by the State of North Carolina allowing the disposal of petroleum

contaminated soils.

(c) Comply with all Federal Statutes, laws, rules and regulations applicable to the disposal or remediation of petroleum contaminated soils.

SECTION 7. PENALTIES:

A. Criminal Penalties

(1) Violation of the provisions of this ordinance or failure to comply with any of its requirements shall constitute a misdemeanor punishable by a thirty (30) day imprisonment or a fine of Five Hundred Dollars (\$500.00) as provided by N.C.G.S. §14-4, or by both in the discretion of the Court and shall be grounds for the suspension or termination of the County permit.

(2) Each day of the violation of this section shall constitute a separate offense.

B. Civil Penalties

(1) Violation of the provisions of this Ordinance, or any part thereof, or rules or orders adopted or issued pursuant to this Ordinance may result in a suspension or termination of the County permit, as well as a fine of Five Hundred Dollars (\$500.00) per incident per day for the first violation; Seven Hundred, Fifty Dollars (\$750.00) per incident per day for the second violation; and One Thousand Dollars (\$1,000.00) per incident per day, for any third or subsequent violation. No penalty shall be assessed until the person alleged to be in violation has been notified of the violation by the registered or certified mail, return receipt requested, or other means. The notice shall describe the violation with reasonable particularity, specify a reasonable time period within which the violation must be corrected and warn that failure to correct the violation within the time period will result in the assessment of a civil penalty or other enforcement action. Each day of continuing violation shall constitute a separate violation.

(2) The County Manager or his/her authorized representative shall make written demand for payment upon the person in violation, and shall set forth in detail a description of the violation for which the penalty has been imposed. If payment is not received or equitable settlement reached within thirty (30) days after demand for payment is made the matter shall be referred to the County Attorney for institution of a civil action in the name of the County in the appropriate division of the General Courts of Justice for recovery of the penalty. Any sums recovered shall be used to carry out the purposes and requirements of this Ordinance.

SECTION 8. INJUNCTIVE RELIEF:

A. This ordinance may be enforced by any appropriate equitable remedy authorized by North Carolina General Statute §153A-123 which equitable remedies shall include, but not limited

to, injunction, order of abatement, a mandatory or prohibitory injunction, and any other orders of the Court that may be necessary and lawful to enforce and carry out the provisions of this Ordinance.

B. Whatever the County Manager or his/her authorized representative has reasonable cause to believe that any person is violating or threatening to violate this Ordinance or any rule or order adopted or issued pursuant to this Ordinance, or any term, condition, or provision hereof, it may, either before or after the institution of any other action or proceeding authorized by this Ordinance, institute a civil action in the name of the County for injunctive relief to restrain the violation or threatened violation. This action shall be brought in the Superior Court of Caswell County.

C. Upon determination by a court that an alleged violation is occurring or is threatened, it shall enter such orders or judgments as are necessary to abate the violation or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to such proceedings from any civil or criminal penalty prescribed for violations of this Ordinance.

SECTION 9. NO OPERATION WITHOUT A PERMIT:

It shall be unlawful to operate any petroleum contaminated soil disposal facility in Caswell County without a permit from Caswell County.

SECTION 10. MONITORING AND ASSISTANCE:

Caswell County recognizes that it is primarily the function of appropriate federal and state agencies to monitor the transportation, treatment, and disposal of petroleum contaminated soil. However, Caswell County recognizes that such agencies are frequently under-staffed and under-funded. One purpose of this Ordinance is therefore, to supplement and complement the activities of federal and state agencies in the areas covered by this Ordinance.

SECTION 11. TRANSPORTATION OF PETROLEUM CONTAMINATED SOIL:

Persons, firms or corporations engaged in transporting petroleum contaminated soil in Caswell County shall at all times have in their possession a manifest describing the material(s) being transported, the contamination content, the point of origin of said material(s) and the destination of said material(s) and be prepared to exhibit said manifest to the County Manager or his/her authorized representative to enforce this Ordinance.

SECTION 12. 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 13. EFFECTIVE DATE:


This Ordinance shall be effective and enforced as of the ___ day of _____, 1996, and to the extent allowed by the law shall be applicable to any land farming operations in Caswell County existing in Caswell County as of that date.

Adopted this the 22nd day of July, 1996, by the Caswell

County Board of Commissioners at its regular meeting in the Caswell
County Courthouse, Yanceyville, North Carolina.


Bobby F. Aldridge, Chairman
Caswell County Board of Commissioners

ATTEST:


Wanda P. Smith
Clerk to the Board
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