

LEE COUNTY**NORTH CAROLINA***Committed Today for a Better Tomorrow*

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**AN ORDINANCE FOR THE CONTROL OF OIL AND
OTHER HAZARDOUS SUBSTANCES IN THE
UNINCORPORATED AREAS OF LEE COUNTY**

WHEREAS, Lee County has the authority pursuant to N.C. Gen. Stat. 153A-121 to enact an ordinance which defines, regulates, prohibits, or abates acts, omissions, or conditions detrimental to the health, safety, or welfare of its citizens; and

WHEREAS, Lee County has the authority, subject to Article 57 of Chapter 106 of the General Statutes, to remove, abate, or remedy everything that is dangerous or prejudicial to the public health;

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners for the County of Lee as follows:

PART 1: GENERAL

SECTION 1. TITLE

This article may be referred to as the "Lee County Oil Pollution and Hazardous Substances Control Ordinance."

SECTION 2. INTENT AND PURPOSE

(A) It is the purpose of this article to promote the health, safety and welfare of the citizens of the county by protecting the land and the waters over which this county has jurisdiction from pollution by oil, oil products, oil byproducts, and other hazardous substances. It is not the intention of this article to exercise jurisdiction over any matter as to which the United States government or the state has exclusive jurisdiction, and no provision of this article shall be so construed. The county further declares that it is the intent of this article to support and complement applicable provisions of the Federal Water Pollution Control Act, 33 USC 1251 et seq. as amended; the National Contingency Plan for removal of oil adopted pursuant to that act; and the state Oil Pollution and Hazardous Substances Control Act of 1978, G.S. 143-215.75 et seq.

(B) Further, it is the intent of this article that the director of emergency management or his designees shall have the authority to summarily abate or remedy hazardous materials or oil discharged into the environment in such a manner as to endanger the health, safety or welfare of the general public or in such a way as to constitute a public health nuisance. The director of emergency management, or his designees, shall determine the type, amount and quantity of equipment and personnel

required to adequately abate and remedy all hazardous materials or oils discharged into the environment.

SECTION 3. TERRITORIAL APPLICABILITY

This Ordinance is applicable to any part of Lee County which is not within the corporate limits of any city or town.

SECTION 4. DEFINITIONS

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Bailee means any person who accepts oil or other hazardous substances to hold in trust for another for a special purpose and for a limited period of time.

Bona fide farm purpose means the production and activities relating to or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural products having a domestic or a foreign market.

Carrier means any person who engages in the transportation of oil or other hazardous substances for compensation.

Department of emergency management means the county department of emergency management.

Designee and designees of either the department of emergency management or the director of emergency management may include but not be limited to any member of the emergency management forces.

Director of emergency management means the county director of emergency management or any of his designees.

Discharge means but shall not be limited to any emission, spillage, leakage, pumping, pouring, emptying or dumping of oil or other hazardous substances into waters of the county or upon the land of the county, but shall not include amounts less than the quantities that may be harmful to the public health or welfare as determined pursuant to G.S. 143-215.77A. However, this article shall not be construed to prohibit the oiling of driveways, roads or streets for reduction of dust or routine maintenance. The use of oil or other hazardous substances, oil-based products, or chemicals on the land or waters by any state, county or municipal government agency in any program of mosquito or other pest control, or their use by any person engaged in a bona fide farm purpose on a bona fide farm or accepted forestry practices, or in connection with aquatic weed control or structural pest and rodent control, in a manner approved by the state, county or local agency charged with authority over such uses, shall not constitute a discharge. The use of a pesticide regulated by the state pesticide board in a manner consistent with the state pesticide law, as amended, shall not constitute a discharge for purposes of this article.

Emergency management forces means the employees, equipment and facilities of all county departments, boards, councils, institutions and commissions directed to take part in any inspection, investigation or restoration under this article; and in addition, it shall include all directed volunteer personnel, equipment and facilities contributed by or obtained from volunteer persons or agencies and all municipal personnel, equipment

and facilities contributed by or obtained from any municipality adopting this article pursuant to N.C. Gen. Stat. § 153A-122.

Having control over oil or other hazardous substances means but shall not be limited to any person using, transferring, storing or transporting oil or other hazardous substances immediately prior to a discharge of such oil or hazardous substances onto the land or into the waters of the county, and specifically shall include carriers and bailees of such oil or hazardous substances.

Hazardous substances means any substance other than oil that when discharged in any quantity may present an imminent and substantial danger to the public health, safety or welfare, as designated pursuant to G.S. 143-215.77A, or constitutes a public health nuisance.

Oil means oil of any kind and in any form, including but specifically not limited to petroleum, crude oil, diesel oil, fuel oil, gasoline, lubrication oil, oil refuse, oil mixed with other waste, oil sludge, petroleum related products or by-products, and all other liquid hydrocarbons, regardless of specific gravity, whether singly or in combination with other substances.

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

Public health nuisance means any discharge determined to be dangerous or prejudicial to the public health.

Premises means any real or personal property involved in a discharge contrary to the provisions of this article.

Restoration and restore means any activity or project undertaken in the public interest or to protect the public interest or to protect public property or to promote the public health, safety or welfare for the purpose of restoring any lands or waters affected by an oil or other hazardous substances discharge as nearly as is possible or desirable to the condition that existed prior to the discharge or to abate a public health nuisance.

Superior court means the county superior court.

Waters means any stream, river, creek, brook, run, canal, swamp, lake, reservoir, waterway, wetlands, or any other body or accumulation of water, surface or underground, public or private, natural or artificial, contained within, flowing through, or bordering upon this county.

PART 2: ENFORCEMENT PROCEDURES

SECTION 5. CRIMINAL PENALTIES

Any person who violates the provisions of this article or fails to comply with any of its requirements shall, upon conviction, be guilty of a misdemeanor and shall be punished as provided in G.S. 14-4.

SECTION 6. CIVIL PENALTIES

(A) Any person who intentionally or negligently discharges oil or other hazardous substances, or knowingly causes or permits the discharge of oil in violation of this article or fails to report a discharge as required by Section 12 or who fails to comply with the requirements of Section 11 or orders issued by the department of emergency management as a result of violations of such requirements, shall incur, in addition to any other penalty provided by law, a penalty in the amount of \$1,000.00 for every such violation. Every act or omission that causes, aids or abets a violation of this subsection shall be considered a violation under the provisions of this subsection subject to the penalty provided in this section.

(B) The penalty provided in this section shall become due and payable when the person incurring the penalty receives a notice in writing from the county manager describing the violation with reasonable particularity and advising such person that the penalty is due. A person may contest a penalty by filing a written request for reconsideration with the board of commissioners within 30 days after receiving notice of the penalty. If any civil penalty has not been paid within 30 days after notice of assessment has been served on the violator, or within 30 days of the board's deciding any request for reconsideration, the county manager shall request that the county attorney institute a civil action in superior court to recover the amount of the assessment.

PART 3: INVESTIGATIONS

SECTION 7. INSPECTIONS AND INVESTIGATIONS

The department of emergency management is empowered to conduct such inspections and investigations as shall be reasonably necessary to:

- (1) Determine compliance with the provisions of this article;
- (2) Determine the persons responsible for violation of this article;
- (3) Determine the nature and location of any oil or other hazardous substances discharged to the land or waters of this county; and
- (4) Enforce the provisions of this article.

SECTION 8. ENTRY UPON LAND

The emergency management forces directed to take part in any inspections, investigation or restoration are empowered upon presentation of identification to enter upon any private or public property for the purpose of inspection or investigation or in order to conduct any project or activity to contain, collect, disperse or remove oil or other hazardous substances discharge or to perform any restoration necessitated by an oil or other hazardous substances discharge.

SECTION 9. CONFIDENTIALITY

Any information relating to a secret process device or method of manufacturing or production discovered or obtained in the course of an inspection,

investigation, project or activity conducted pursuant to this division shall not be revealed except as may be required by law or lawful order or process.

PART 4: OIL AND HAZARDOUS DISCHARGE CONTROLS

SECTION 10. DISCHARGES

(A) **Unlawful discharges.** It shall be unlawful, except as otherwise provided in this division, for any person to discharge or cause to be discharged oil or other hazardous substances into or upon any waters or lands within the county, or into any sewer, surface water drain or other waters that drain into the waters of this county, regardless of the fault of the person having control over the oil or other hazardous substances, or regardless of whether the discharge was the result of intentional or negligent conduct, accident or other cause. Any discharge occurring in violation of this section constitutes a public health nuisance and is determined to be detrimental to the health, safety and welfare of the citizens of the county.

(B) **Exceptions.** This section shall not apply to discharges of oil or other hazardous substances in the following circumstances:

- (1) When the discharge was authorized by law, either statutory or regulatory.
- (2) When any person subject to liability under this division proves that a discharge was caused by any of the following:
 - a. An act of God.
 - b. An act of war or sabotage.
 - c. Negligence on the part of the United States government or the state or its political subdivisions, including the county.
 - d. Any act or omission by or at the direction of a law enforcement officer, fire fighter or authorized emergency management forces for the purpose of ensuring the safety of the public.

(C) **Permits.** Any person who desires or proposes to discharge oil or other hazardous substances onto the land or into the waters of this county shall first make application for and secure the permit required by G.S. 143-215.1, and shall file a copy of the permit with the department of emergency management prior to discharge.

SECTION 11. REMOVAL OF PROHIBITED DISCHARGES

(A) **Person discharging.** Any person having control over oil or other hazardous substances discharged in violation of this division shall immediately undertake to collect and remove the discharge and to restore the area affected by the discharge as nearly as may be to the condition existing prior to the discharge. If it is not feasible to collect and remove the discharge, the person responsible shall take all practicable actions to contain, treat and disperse the discharge; but no chemicals or other dispersant or treatment materials that will be detrimental to the environment or natural resources shall be used for such purposes unless they shall have been previously approved by the state environmental management commission. The owner of an underground storage tank who is the owner of the tank only because he is the owner of the land on which the underground storage tank was located on his property,

and who did not become the owner of the land as the result of land participate in a transfer to avoid liability for the underground storage tank shall not be deemed to be responsible for a release or discharge from the underground storage tank.

(B) **Removal by county.** The county is authorized and empowered to utilize any staff, equipment and materials under its control or supplied by any other cooperating federal, state or local agencies and to contract with any agent or contractor that it deems appropriate to take such actions as are necessary to collect, investigate, perform surveillance over, remove, contain, treat or disperse oil or other hazardous substances discharged onto the land or into the waters of the county and to perform the necessary restoration regardless of whether the discharge is in violation of this division. The director of emergency management shall keep a record of all expenses incurred in carrying out any project or activity authorized under this section, including actual expenses incurred for services performed by the county's personnel and for use of the county's equipment and material. The authority granted by this subsection shall be limited to projects and activities that are designed to protect the public health, safety or welfare, or public property, or abate a public health nuisance, and shall be compatible with the National Contingency Plan established pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq.

(C) **Cooperation with county.** In any removal undertaken by the county, the person having control over such hazardous materials shall assist in the abatement, removal and remedial measures associated with the oil or hazardous material discharge. Assistance shall consist of any or all of the following:

(1) Shall comply with the direction and orders of the director of emergency management.

(2) Shall supply emergency response plan information available for the site of any discharge.

(3) Shall supply emergency response equipment personnel and materials available on the site.

(4) Shall supply any information on the product or chemical released that may be available to that person.

SECTION 12. REQUIRED NOTICE

Every person owning or having control over oil or other substance discharged in any circumstances other than pursuant to a rule adopted by the state environmental management commission, a regulation of the U.S. Environmental Protection Agency, or a permit as described in Section 10(C), or the Federal Water Pollution Control Act, upon notice that such discharge has occurred, shall immediately notify the department of emergency management of the nature, location and time of the discharge and of the measures being taken or are proposed to be taken to contain and remove the discharge. The designee of the department of emergency management receiving the notification shall immediately notify the director of emergency management or such member of the permanent staff of the department of emergency management as the director may designate. If the discharged substance of which the department of emergency management is notified is a pesticide regulated by the state pesticide board, the director of emergency management shall immediately inform the chair of the pesticide board. Removal operations under this section of substances

identified as pesticides defined in G.S. 143-460 shall be coordinated in accordance with the pesticide emergency plan adopted by the state pesticide board; provided that in instances where entry of such hazardous substances into waters of the county is imminent, the department of emergency management may take such actions as are necessary to physically contain or divert such substances so as to prevent entry into the surface waters.

PART 5: COLLECTION OF EXPENSES

SECTION 13. Determination of Expenses

Upon completion of any oil or other hazardous substances removal or restoration project or activity or abatement conducted pursuant to the provisions of this division, each department of the county that has participated by furnishing personnel, equipment or material shall deliver to the emergency management department a record of the expenses incurred by the department. Upon completion of any oil or other hazardous substances removal or restoration project or activity, the director of emergency management shall prepare a statement of all expenses and costs of the project or activity expended by the county and shall transmit this to the county manager.

SECTION 14. Demand for Payment

Upon receipt of the statement of expenses and costs from the director of emergency management, the county manager shall make demand for payment upon the person having control over the oil or other hazardous substances discharged to the land or waters of the county unless the discharge has occurred due to any of the reasons stated in Section 10(B).

SECTION 15. Contested charges

A person contesting a demand for payment made pursuant to Section 14 shall have ten days from receipt of the demand for payment to request that the matter be considered by the board of commissioners. The final decision of the board may be appealed to the superior court within 30 days of the date of that decision in an action in the nature of certiorari.

SECTION 16. Collection

Any person having control of oil or other hazardous substances discharged to the land or waters of the county in violation of the provisions of this division and any other person causing or contributing to the discharge of oil or other hazardous substances shall be directly liable to the county for the necessary cleanup projects and activities arising from such discharge, and the county shall have a claim to recover from any and all such persons. If the person having control over the oil and other hazardous substances discharged shall fail or refuse to pay the sum expended by the county, the amount shall be a lien upon the land or premises where the discharge occurred, and shall be collected as unpaid taxes.

SECTION 17. PENALTY

Any person violating any prohibition or restriction imposed by this chapter shall be guilty of a misdemeanor, punishable upon conviction by the maximum fine provided by G.S. 14-4.

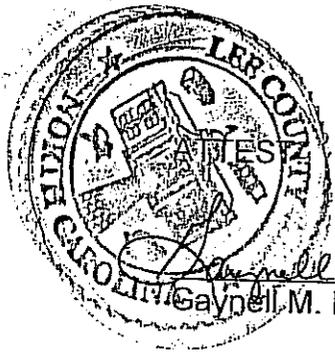
SECTION 18. CONFLICT OF LAWS

If any portion of this ordinance or the enforcement thereof is found to be preempted by state or federal law, such preemption shall not operate to invalidate the rest of the ordinance and the same shall remain in full force and effect. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed.

SECTION 19. EFFECTIVE DATE

This ordinance shall be effective upon adoption.

Adopted this the 15th day of September 2008.



Gaynell M. Lee
Gaynell M. Lee, Clerk

Robert H. Brown
Robert H. Brown, Chairman
Lee County Board of Commissioners

LEE COUNTY

Committed Today for a Better Tomorrow

Rate and Fee Schedule for Hazardous Materials Response and Remediation Costs For Fiscal Year 2008-2009

| <u>Description</u> | <u>Rate</u> |
|---------------------------------------------|---------------------------------|
| Emergency Mgmt Director Response | \$36.00/Hr |
| Emergency Mgmt Part Time Personnel Response | \$16.00/Hr |
| Fire Marshal Response | \$36.00/Hr |
| Assistant Fire Marshal Response | \$25.00/Hr |
| Contractor | Invoice |
| Supplies Used by County | Replacement Cost |
| Vehicle Mileage | IRS Business Mileage Rate |
| County Owned Equipment | FEMA Reimbursement Schedule |
| Overhead/Billing Expense | 2% of Total Invoice From County |

All invoices from the County shall have a 2% overhead and billing expense fee added to recoup expenses in accounting and billing.

Note:

Rates are subject to change annually