

APPENDIX H

**Henderson County Code
Part II: General Legislation
Chapter 165
Solid Waste**

ARTICLE I Incinerators (§ 165-1 - § 165-8)

[Adopted 10-23-1991]

§ 165-1 Title and jurisdiction.

[Amended 8-20-2003]

This article shall be known and may be cited as the "Henderson County Ordinance for the Regulation of Incineration Facilities." This article shall apply to all unincorporated areas of Henderson County and to those incorporated areas of any city or town specifically requesting its enforcement by Henderson County upon the consent of the Henderson County Board of Commissioners. (In making such a request, the city or town must comply with the requirements of N.C.G.S. 153A-122.)

§ 165-2 Purpose.

The purpose of this article is to:

A.

Regulate the location, operation and management (including the storage, transfer, treatment and disposal of waste and by-products) of incineration facilities with a total incineration capacity greater than 250 pounds per hour.

B.

Assure that competent management, environmental and safety practices are used in waste incineration.

C.

Assure that the operation of such facilities in Henderson County poses no unreasonable threat to the water, land and air resources of Henderson County.

D.

Assure that all by-products of incineration, including fly ash, bottom ash and plant emissions, are in compliance with the quantitative limits for materials as specified in the North Carolina Administrative Code, Title 15A.

§ 165-3 Permit application.

A.

Any person, corporation or other entity desiring to operate an incinerator in Henderson County shall prepare and file an incineration permit application with the County Commissioners. Such permit application shall include all documents submitted to the United States of America, or any department or agency of the government thereof, and to the State of North Carolina regarding such incinerator, which such entity desires to operate in Henderson County.

B.

For the purpose of this article, the term "incinerator" is defined as any combustion device that burns more than 250 pounds per hour of any fuel other than the classical boiler fossil fuels, such as natural gas, coal or fuel oil. This definition does not apply to afterburners, flares, fume incinerators and other similar devices used to reduce process emissions of air pollutants.

C.

Any permit issued hereunder shall not be transferable to any other entity without approval of the Henderson County Board of Commissioners.

D.

The application shall contain the following information and declarations:

(1)

A complete and full description of the entity desiring to operate such incinerator, including, but not be limited to, the following: information on its financial status and a detailed history of all of the applicant's past activities in the field of incineration, including a synopsis of every other facility it has built or operated. Such synopsis shall include a detailed account of any citations received by the applicant, including a copy thereof, as well as a detailed accounting of all past and pending litigation, regardless of its outcome, including copies of all documents included in any court file, and any claims made against the applicant. The application shall include the same information as listed herein for any subsidiary or other entity in which the applicant has an ownership interest of at least 5% of the applicant.

(2)

The applicant shall submit copies of policies or an irrevocable commitment to insure as evidence of insurance for any liability incurred by the applicant in the operation of the incinerator upon the grant of a license hereunder. The policy of insurance (or commitment to insure) shall be an occurrence-based policy and shall require an annual payment of premium. Such policy (or commitment to insure) shall have a minimum limit of liability in the amount of \$10,000,000. Insurance coverage or performance bonding at

the operator's expense must be provided after any potential permanent shutdown with a minimum five-year coverage suggested.

(3)

A statement of the anticipated benefits, both to the applicant and Henderson County, which will result from the project.

(4)

A description of the scope of the proposed project, including an estimated schedule of how much and what kinds of waste the facility would accept, where the waste would come from, what pretreatment and separation will be required of wastes unacceptable to the facility without such pretreatment or separation and how long the facility is expected to operate. This description shall also include a detailed statement of the proposed on-site storage facilities for materials to be incinerated.

(5)

A statement of anticipated annual site operation expenses and an estimate of such expenses for the lifetime of the project.

(6)

A statement of the proposed method of financing the project, from development through operation and closure stages, including a list of all sources of financing, including their names, addresses and the extent and type of each source's commitment.

(7)

A statement of qualifications of all management personnel to be employed at the site and the proposed number and job descriptions of all employees at the site, including information on the training and experience required for each position and safety precautions undertaken for the protection of personnel.

(8)

The anticipated date to begin construction.

(9)

The anticipated date to begin operation.

(10)

A detailed estimate of the types and amounts of local government services required by the operation in each year.

(11)

A description of emergency procedures and safety precautions that will be in use at this facility. This description should include details on emergency assistance and emergency medical treatment that could be required from County medical facilities, the Henderson County Rescue Squad and County Fire Departments.

(12)

A statement of approval of preliminary or final plans for the proposed facility by any state or federal agencies having review authority, by any fire department or departments who would respond to an emergency at such site, by the Henderson County Rescue Squad, the Henderson County Department of Emergency Medical Service, the Henderson County Sheriff's Office and the Henderson County Inspection Department.

[Amended 11-18-1998]

(13)

A statement by the applicant agreeing to pay all costs of providing any special equipment or training required by County emergency services (such as but not limited to hazardous environmental protective fire suits) required as a result of the construction or operation of the incinerator.

(14)

A description of the environmental protection measures to be taken by the applicant to prevent contamination in and around the facility, the plant site and the County.

(15)

A detailed description of planned monitoring systems for emissions or by-products of the incinerator. Such description should include a statement of the specific chemical compounds and elements to be monitored and the instrumentation for such monitoring and that such instrumentation meets the minimum operating standards described in North Carolina Air Quality Regulations, Title 15A of the North Carolina Administrative Code.

(16)

A statement of the maximum expected start-up and shutdown times.

(17)

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

(18)

A detailed description of the site closure plan for the facility and the anticipated date of closure.

(19)

The plan for post-closure care, including site decontamination.

(20)

A sworn statement that the applicant declares that it has examined the application and all attachments and that to the best of the applicant's knowledge and belief all information contained therein is correct and complete.

E.

Maps of the proposed site (including any property upon which the incinerator, or any other activity connected with the incinerator, is to be located or conducted) and other written material attached to the application shall be provided which shall include, but is not limited to, the following information:

(1)

Ownership:

(a)

The name and address of the owner and/or agent of the property upon which the incinerator, or any other activity connected with the incinerator, is to be located.

[Amended 11-18-1998]

(b)

Description of any existing rights-of-way or easements affecting the property upon which the incinerator, or any other activity connected with the incinerator, is to be located.

(c)

A certified copy of all restrictive covenants affecting the property upon which the incinerator, or any other activity connected with the incinerator, is to be located.

(2)

Description. Location of property by Tax Map property identification number and the legal description of the property. This description should include a reference to the deed book and page or other evidence of title of the current property owner.

(3)

Features. Each map shall contain the following:

(a)

Drawn to a scale of not less than 200 feet to the inch.

(b)

Location sketch map showing relationship of the project to the surrounding area.

(c)

Graphic scale, date, North arrow and legend.

(d)

Location of the property represented by the map with respect to surrounding property and roads and the names and addresses of adjacent property owners according to County tax records.

(e)

Zoning classification of the proposed project and adjacent property.

(f)

The location of all boundary lines of the property as surveyed.

(g)

The total acreage of land in the project.

(h)

The location of existing and/or platted streets, easements, buildings, railroads, cemeteries, bridges, sewer lines, waterlines, culverts, wells and gas and electric transmission lines.

(i)

The location of all water bodies, water courses, groundwater aquifers, springs and other pertinent features evident from a visual inspection of the property.

(j)

The location, dimensions and acreage of all property proposed to be set aside for various uses on the applicant's property, together with a statement of each use for each area.

(k)

The location of all test wells and/or borings.

(l)

The location of the one-hundred-year floodplain and any existing records of flood, including inundation due to dam break.

(m)

The location of any historic properties and grave sites on the property represented by the map, including any plans for relocation of graves and properties having historical significance.

(4)

Geological map. A map showing the location of faults, dikes, sills and other pertinent geologic features, including, but not limited to, the following: bedrock type and strike and dip of any mappable bedding; the depth and degree of weathering (saprolite); identification and location of clay as to thickness, type and permeability; and location of the water table as to approximate depth, gradient and surface configuration.

(5)

Topographic map. A topographic map with contours at vertical intervals of not more than five feet at the same scale as the project site map. Date, method of preparation and preparer of said map shall be stated on such map.

(6)

Transportation route map. A map showing proposed transportation routes to and from the facility site for materials to be incinerated, including the location of towns and emergency and safety facilities. Such map shall include an estimate of the volume of material to travel on each route.

F.

The application shall state the applicant's plans for dealing with the following factors with regard to, but not limited to, on-site storage and/or disposal:

(1)

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

(2)

Contaminant movement with groundwater, including groundwater monitoring systems at the site and in a potentially affected area; subsurface slurry wall barriers control and other groundwater withdrawals in the area.

(3)

Predictability of contaminate movement, based on preconstructed boring and groundwater modeling.

(4)

Potential surface water effects: planned exclusion systems for surface water run-on; planned collection systems for surface water runoff, including wash water used in the cleaning process and in transport equipment and areas.

(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 supply; planned runoff 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)

With respect to incineration, the nature and predictability of pollution movement, including planned height for stacks with continuous stack and plume monitoring instrumentation.

(10)

Detailed description of plans to segregate incompatible wastes.

(11)

The applicant's plan for ensuring the exclusion from the incinerator of the following incinerator feedstocks:

(a)

All waste materials classified by the United States of America (or any department or agency of its government) or the State of North Carolina as hazardous or toxic or radioactive.

(b)

Medical waste.

(c)

Any other waste type or category designated as excluded by the County Commissioners and any materials determined to be toxic or hazardous subsequent to the granting of a permit.

G.

The applicant shall submit a plan to ensure that process data is monitored and recorded. Such data will be delivered to the responsible person or persons as designated by the Henderson County Board of Commissioners on the first business day of each week for review and permanent storage.

H.

The above listed application information shall be assembled, indexed, bound and labeled. Ten copies shall be prepared for review by the County. Any items not submitted shall be identified along with an explanation of why that item was omitted or when information would be forthcoming.

§ 165-4 Fees.

A.

The application shall be accompanied by an initial permit application fee in the amount of \$10,000. The County shall then determine whether any additional application fee will be necessary and notify the applicant. The maximum application fee shall be \$150,000. The amount of the additional application fee, if any, shall be the amount the County anticipates that will be necessary to reimburse the County as stated below. Any additional fee required hereunder shall be paid by the applicant to the County within 45 days of notification of the amount of such fee by the County. All application fees shall be held by the County in trust.

(1)

Such fees shall be drawn upon by the County to reimburse the County for the costs of any professional assistance that the County in its sole discretion determines that it requires to evaluate the permit application and amendments, verify its contents and evaluate the impact of the proposal on the community, public health and environment, and any other costs incurred by the County in processing the application.

(2)

Any funds not expended by the County in the review of the permit application shall be returned to the applicant at the time of the final decision as to whether or not to issue the permit.

B.

No action will be taken by the County officials or Boards until the funds for the application fee have been remitted by the applicant to the County and payment has cleared the banks and the funds have been posted to the trust account as stated above.

§ 165-5 Review of application; issuance of permit; construction deadlines.

A.

The applicant shall submit to the Board of County Commissioners 10 copies of all information required by federal and state agencies for the proposed facility. 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.

B.

Upon submission of the completed application and the payment of the application fee, the Board of Commissioners shall have 30 days in which to determine if the application is complete and shall mail notice of its determination to the applicant. If it is not complete, the applicant will have 30 days to complete the application unless an extension for cause

is granted by the Board of County Commissioners; after 30 days, the County may return the uncompleted application and accompanying fees to the applicant.

C.

Each application shall be reviewed by the County staff and/or by such consultant or designated Board as determined by the Board of Commissioners. Such analysis shall be made within 90 days of receipt of a completed application, unless an extension is warranted and granted by the Board of County Commissioners. Upon completion of the analysis, a report shall be made at the next regular meeting of the County Commissioners.

D.

Within 45 days from the date the report is presented, the Commissioners shall hold a public hearing for comment on the proposed permit along with the analysis of County staff and consultants. The purpose of such hearing shall be for public comment on the proposed facility. Within 15 days prior to the hearing, notice of the time and place of the hearing shall be sent to all adjacent property owners of the proposed site. Notice shall also be published in a newspaper of local circulation. If the date of the hearing does not coincide with a regular evening meeting, then another evening hearing date shall be set.

[Amended 11-18-1998]

E.

Within 60 days of the hearing, the Board of County Commissioners shall make its decision to grant the permit, deny it or grant it with specified conditions. In making such determination, the Board of Commissioners shall determine:

(1)

That the construction and operation of the facility will not pose an unreasonable risk to the health and welfare of Henderson County or to site operating personnel.

(2)

That the applicant or facility operation 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 an adequate method, based upon accepted technology, for handling the waste for which the applicant will be permitted and that it appears the applicant has demonstrated that it will provide competent management, and the best safety practices will be employed in handling the waste at the proposed facility.

F.

The applicant has 18 months from the date of issuance of a permit to begin construction and 24 months from the beginning of construction to complete the facility and bring it on line. Extensions to these requirements may be granted by the Board of County Commissioners for cause.

§ 165-6 Privilege license tax.

A privilege license tax, in an amount to be set annually by the Commissioners, will be required and paid annually in conformity with N.C.G.S. 153A-152.1. The privilege license tax will be in direct proportion to the costs incurred by Henderson County to monitor the facility to ensure compliance with the regulations contained herein and the amount necessary to prepare Henderson County to respond to emergencies which may result from any emergency caused by the facility.

§ 165-7 Emissions.

Emissions from all incinerators subject to regulation hereunder shall not exceed the most restrictive provisions of the Toxic Air Pollutant Guidelines as given in the most current North Carolina Administrative Code, Title 15A, or its subsequent equivalent documents.

§ 165-8 Enforcement; violations and penalties.

[Amended 11-18-1998]

Pursuant to the power vested in the County by N.C.G.S. 153A-123, the County, through its responsible officers, shall enforce the provisions of this article to ensure and safeguard the public health, safety and welfare. Violations of this article shall be subject to the penalties provided in Chapter 1, General Provisions, Article II, except that the civil penalty for violations of this article shall be \$5,000.

ARTICLE II Collection and Recycling (§ 165-9 - § 165-39)

[Adopted 2-17-1993, amended 7-6-1993; 11-17-1993]

§ 165-9 Purpose; statutory authority; jurisdiction.

A.

The purpose of this article is to protect human health and the environment by regulating the storage, collection, transportation and disposal of solid waste in Henderson County, to provide environmentally sound, cost-efficient solid waste disposal and to provide for the safe operations at the County facility.

[Amended 12-17-1997]

B.

This article is adopted under the authority of N.C.G.S. 153A-121, 153A-132.1, 153A-136, 153A-274 through 153A-278 and 153A-291 through 153A-293 and 130A-309.09A, 130A-309.09B, 130A-309.09C and 130A-309.09D.

[Amended 11-18-1998]

C.

Unless otherwise indicated, the ordinance applies to publicly owned municipal solid waste management facilities located in Henderson County and to all unincorporated areas of the County. Additionally, this article shall apply to those incorporated areas of any city or town specifically requesting its enforcement by Henderson County upon the consent of the Henderson County Board of Commissioners. (In making such a request, the city or town must comply with the requirements of N.C.G.S. 153A-122.)

[Amended 8-20-2003]

§ 165-10 Administration and enforcement.

The Henderson County Board of Commissioners shall administer, interpret and enforce the provisions of this article by and through the Solid Waste Director or his representatives. For the purpose of this article, "representative" shall mean any employee within the Solid Waste Department unless otherwise designated by this article.

§ 165-11 Title.

This article shall be known and be cited as the "Henderson County Solid Waste Ordinance."

§ 165-12 Word usage and definitions.

A.

For purposes of this article, the following terms, phrases, words and their derivatives shall have the meanings given herein. When not consistent with the context, words used in the present tense include the future tense; words used in the plural include the singular, and words in the singular include the plural. The word "shall" is always mandatory and not merely directive.

B.

The following definitions shall apply in the interpretation and enforcement:

BOARD

The Board of Commissioners of Henderson County, North Carolina.

BULKY WASTE

Large items of solid waste, such as white goods, furniture (excluding cushions), large auto parts, trees, large blocks of concrete and asphalt, stumps and other oversize waste whose large size precludes or complicates their handling by normal solid waste collection, processing or disposal methods.

CIVIL PENALTY

A monetary fine assessed according to a schedule adopted by the Henderson County Solid Waste Department due to a violation of this article.

COLLECTOR

Any person who picks up or hauls solid waste or recyclable materials for a fee.

COMMERCIAL ESTABLISHMENT

Any retail, wholesale, institutional, religious, governmental, service establishment or other nonresidential establishment which may generate garbage, litter or other solid waste.

COMMISSION

The Environmental Management Commission.

COMPOSTING

The controlled decomposition of organic waste by naturally occurring bacteria, yielding a stable, humus-like, pathogen-free final product.

CONSTRUCTION or DEMOLITION

When used in connection with waste or debris, means solid waste resulting solely from construction, remodeling, repair or demolition operations on pavement, buildings or other structures.

CORRUGATED CARDBOARD

Unwaxed paper boxes and other thick layered brown paper, formed with grooves and ridges, used in shipping or in which shipped goods are received.

COUNTY

Henderson County.

COVERED

Encased by a tarpaulin, camper cover, metal cover, rigid cover, plastic, canvas or other suitable material, which is secured to prevent spillage, leakage or materials from blowing from the vehicle. Solid waste in plastic bags shall not be considered covered.

DEPARTMENT

The North Carolina Department of Environment, Health and Natural Resources.

DWELLING

Any residential unit housed in a building used for residential purposes or manufactured homes or a structure used for residential purposes on any property.

EPA

The United States Environmental Protection Agency.

FACILITY

Solid waste management facility, including the landfill, transfer station, recycling center, wood waste mulching area and other designated areas located at 802 Stoney Mountain Road.

[Added 12-17-1997]

GARBAGE

All putrescible wastes, including animal offal and carcasses, and recognizable industrial by-products, but excluding sewage and human waste.

HAULER

Any person, permitted or not, who collects and transports refuse or other solid wastes or recyclable materials on public or private streets in Henderson County.

HAZARDOUS REFUSE

Includes any rusted, jagged appliances or machinery, specifically, iceboxes and refrigerators, whose doors have not been properly dismantled, or which has been determined by the Solid Waste Director to constitute a health or safety hazard.

HAZARDOUS WASTE

(1)

A solid waste or combination of solid wastes which, because of its quantity, concentration or physical, chemical or infectious characteristics, may cause or significantly contribute to an increase in mortality or increase in serious irreversible or incapacitating reversible illness or pose a substantial problem or potential hazard to human health or the environment if improperly treated, stored, transported or disposed of or otherwise managed.

(2)

Any substance classified as a hazardous waste by the EPA.

INDIVIDUAL

Any person, organization, business or other entity generally capable of owning real estate.

INDUSTRIAL WASTE

All waste, including garbage, solids, semisolids, sludges and liquids created or generated by factories, processing plants or other manufacturing enterprises.

MICROBIOLOGICAL WASTE

Cultures and stocks of infectious agents, including but not limited to specimens from medical, pathological, pharmaceutical, research, commercial and industrial laboratories.

MIXED PAPER

Envelopes, catalogs, bulk mail, magazines, computer paper, copy paper, file folders, phone books, gray cartons, adding machine tapes, letters, scratch pads, soft-covered books and other material as defined by the Recycling Center Manager.

OPEN BURNING

Any fire whose products of combustion are emitted directly into the outdoor atmosphere without passing through a stack or chimney, approved incinerator or other similar device.

OPEN DUMP

The consolidation or collection of solid waste from one or more sources at a disposal site which has unsanitary conditions, insignificant or no cover or insignificant or no management. This term shall include any disposal area which has not been approved by the Department.

PATHOLOGICAL WASTE

Human tissues, organs and body parts and the carcasses and body parts of all animals that were known to have been exposed to pathogens that are potentially dangerous to humans during research, were used in the production of biologicals or in vivo testing of pharmaceuticals or that died with a known or suspected disease transmissible to humans.

PERMIT

Written authorization from the Solid Waste Director to haul solid waste or recyclable material in Henderson County for hire or compensation.

PERMITTED HAULER

Any solid waste or recyclable material hauler authorized by the Solid Waste Director to transport refuse, solid waste or recyclable material for hire or compensation.

PERSON

Any individual, firm, organization, partnership, corporation, company or unincorporated association.

PUTRESCIBLE WASTE

Solid waste capable of being decomposed by microorganisms with sufficient rapidity as to cause nuisance from odors and gases, such as kitchen wastes, offal and carcasses.

RADIOACTIVE MATERIAL

Any material which emits ionizing radiation spontaneously.

RECYCLE, RECYCLABLES or RECYCLABLE MATERIAL

Those materials or that process by which solid waste, or materials which would otherwise become solid waste, are collected, separated or processed and reused or returned to use in the form of raw materials or products.

REFUSE

All nonputrescible waste.

REFUSE RECEPTACLE or RECEPTACLE

A metal or plastic container or other material approved by the Solid Waste Director.

REGULATED MEDICAL WASTE

Blood and body fluids in individual containers in volumes greater than 20 milliliters, microbiological waste and pathological waste that have not been treated.

RUBBISH

Solid or liquid waste from residences, commercial establishments or institutions.

SHARPS

Needles, syringes with attached needles, capillary tubes, slides and cover slips, scalpel blades, test tubes and blood collection tubes.

SOLID WASTE

Any hazardous or nonhazardous garbage or other refuse, rubbish, litter, trash, tires and other discarded solid materials and solid or semisolid waste materials resulting from industrial, commercial and agricultural operations and from community activities, but does not include solids or dissolved materials in domestic sewage or other significant pollutants in water resources, such as silt, dissolved or suspended solids in industrial wastewater effluent, dissolved materials in irrigation return flows or other common water pollutants. As used herein, "solid waste" shall refer collectively to any or all of the aforementioned waste materials, unless otherwise specified.

TRANSFER STATION

A permanent structure with mechanical equipment used for the collection or compaction of solid waste prior to the transportation of solid waste for final disposal.

[Added 12-17-1997]

UNSANITARY ACCUMULATION

Any amount of solid waste which is odoriferous, pestiferous or otherwise threatening to human health as determined by the Solid Waste Department.

USED MOTOR OIL

Any oil that has been refined from crude oil or synthetic oil and, as a result of use, storage or handling, has become unsuitable for its original purpose.

WHITE GOODS

Inoperative or discarded refrigerators, ranges, water heaters, freezers and other similar domestic and commercial large appliances.

YARD WASTE

Solid waste consisting solely of vegetative matter, such as leaves, grass, limbs and trimmings, resulting from landscaping maintenance.

§ 165-13 Residential and other noncommercial property.

A.

Improper storage of waste prohibited. No owner, occupant, tenant or lessee of any property, jointly or severally, may deposit, store or permit to accumulate any solid or hazardous waste upon such property that is not stored or disposed of in a manner prescribed by this article. Further, it shall be the duty of each owner, occupant, tenant or lessee to provide approved receptacles as specified in § 165-15A.

B.

Open dumps prohibited. No person shall permit on any land owned, occupied or leased by him or her any open dump.

C.

Responsibility for removal. It shall be the duty of any owner, occupant, tenant or lessee of any property, jointly or severally, to remove or properly dispose of any of the conditions described in Subsection A above. This section shall also apply to refuse and other solid waste deposited on any property through the action of streams, creeks, rivers, lakes or other waterways or through the runoff of any such waterways. In removing such conditions, persons may seek the guidance of the Henderson County Solid Waste Director and shall follow the procedures set forth in § 165-18 below.

§ 165-14 Commercial, industrial and institutional property.

A.

Proper maintenance of premises. The owner, proprietor or person in charge of any commercial, industrial or institutional building, parking lot or other site shall be obligated, both jointly and severally, to keep driveways, yards, parking lots and areas adjacent thereto and under his control clean at all times and to place sweepings, litter, refuse and other debris in an approved receptacle to prevent dispersal by wind, rain, animals and other causes. Further, no crate, box or similar container liable to deterioration by sun, wind, rain, animals or other causes shall be kept on any street or sidewalk, parking lot or other area, except that such containers may be placed out for collection on the day of such collection.

B.

Solid waste receptacles required. The owner, proprietor or person in charge of any commercial, industrial or institutional building, parking lot or other site shall be obligated, jointly and severally, to provide solid waste receptacles of sufficient size and quantity as specified in § 165-15 of this article. Specifically, but not exclusively, the requirement for such containers shall apply to shopping centers, supermarkets, convenience stores, fast-food and other restaurants, service stations and other similar establishments and shall likewise apply to industries, commercial establishments, schools, manufactured home parks, recreational vehicle parks, summer camps, churches and other institutions. Spillage and overflow from such containers shall be cleaned up by the owner, proprietor or person in charge immediately and as it occurs.

§ 165-15 Storage.

A.

Storage container requirements. Solid waste shall be stored in a container that is durable, rust resistant, nonabsorbent, watertight and easily cleaned, with a close-fitting, flytight cover in place. The number of containers shall be adequate to store one week's accumulation of solid waste. Containers shall be limited to 32 gallons maximum capacity. Containers shall be kept clean so that no insect breeding, odor or other nuisance will exist.

B.

Rodents. Solid waste shall be stored in a manner that will not harbor rodents and vermin and will not create a fire hazard.

C.

Storage of other refuse. Other refuse may be stored as in Subsection A above but shall be stored in such manner that it will not provide harborage to rats, cause a fire or safety hazard or become windblown.

D.

Cardboard boxes as receptacles. Cardboard boxes, cartons and crates may be used as refuse receptacles only when used to contain other refuse and when properly secured by tying or taping. Cardboard boxes, crates or cartons used as refuse receptacles shall have a one-time use only and shall be collected along with the refuse contained in them.

E.

Airtight containers prohibited. No person shall leave outside of the building or dwelling, or in any place accessible to children, any abandoned, unattended or discarded ice box, refrigerator or other container of any kind which has an airtight door without first removing the door from such icebox or refrigerator.

§ 165-16 Collection.

A.

Frequency of removal. All solid waste shall be removed from any property upon which it is stored at least once a week.

B.

Hiring of permitted collector allowed. The owner, occupant, tenant or lessee may remove such solid wastes in accordance with §§ 165-17 and 165-18 below or may contract with a permitted collector serving the relevant area.

C.

Spillage prohibited. These permitted collectors shall be responsible for removing any solid waste spilled during the collection process, shall leave the premises in a clean condition and shall conform to the provisions of any County ordinance in effect regulating the collection and disposal of solid waste by private collectors in Henderson County.

D.

Recycling program required. All private haulers who collect solid waste for a fee will be required to establish a program to collect and recycle aluminum cans and corrugated cardboard. Private haulers may not accept said material if commingled with the solid waste they collect.

[Amended 11-18-1998]

§ 165-17 Transportation.

A.

Conformity with ordinance required. No solid waste shall be transported except in conformance with this section which applies to permitted haulers and individuals hauling their own solid waste.

B.

Spillage prohibited. The vehicles or containers used for the collection and transportation of solid wastes shall be loaded and removed in such a manner that the contents will not fall, leak or spill therefrom. Materials spilled by the hauler shall be picked up immediately by the hauler and returned to the vehicle or container and the area properly cleaned.

C.

Cover requirements. Vehicles shall be covered by effective means during transportation to prevent blowing of materials from out of the vehicle. "Effective means" shall include, but not be limited to, durable, heavy plastic or canvas tied down or secured to cover all the load. Loads consisting of bulky waste, white goods, lumber, pallets and crates do not have to be covered but shall be secured with rope or tie-downs to assure spillage does not occur. Upon entrance to the facility gate, any removal of tarps or similar covers on solid waste shall be prohibited until the destination is reached in a designated facility disposal area.

[Amended 12-17-1997]

D.

Display of permit numbers. All vehicles, except those owned by individuals transporting their own solid waste, shall display their permit number issued by the Solid Waste Director.

§ 165-18 Disposal.

A.

No disposal except as provided. Solid waste shall be disposed of only by one of the following methods:

(1)

Sanitary landfill that has been approved by the Department.

(2)

Incinerator that meets all requirements of the local, state and federal air pollution standards and control permits.

(3)

Transfer station that has been approved by the Department.

[Added 12-17-1997

Editor's Note: This ordinance also redesignated former Subsection A(3) as Subsection A(4).

]

(4)

Any other method, including reclaiming, composting or recycling processes, that has been approved by the Solid Waste Director.

B.

Disposal of hazardous, regulated medical, radioactive waste. Hazardous, regulated medical and radioactive wastes shall be disposed of according to written procedures approved by the Department.

C.

Littering prohibited. No person may intentionally or negligently discard, dispose, leave or dump any solid waste on or along any street or highway or on public or private property unless such solid waste is placed in a receptacle or at a location designated for the deposit of solid waste.

D.

Disposal of tires. The disposal of tires on publicly or privately owned property is strictly prohibited. Nothing in this article shall be interpreted to preclude the use of tires in an accepted agricultural practice.

E.

Disposal of sharps. Sharps shall be placed in an approved, sealed, punctureproof container prior to disposal.

F.

Burning of solid waste. The purpose of this subsection is for preventing, abating and controlling air pollution resulting from air contaminants released in the open burning of refuse and other combustible materials. While recognizing that open burning contributes to air pollution, certain types of open burning may reasonably be allowed in the public interest. Therefore, there shall be no burning of solid waste in Henderson County except as authorized by state burning laws. Burning of solid waste. The purpose of this subsection is for preventing, abating and controlling air pollution resulting from air contaminants released in the open burning of refuse and other combustible materials. While recognizing that open burning contributes to air pollution, certain types of open burning may reasonably be allowed in the public interest. Therefore, there shall be no burning of solid waste in Henderson County except as authorized by state burning laws.

G.

Private disposal of solid waste. This section shall not be construed to prevent any person from properly disposing of solid waste from his own residence on his property in a safe and sanitary manner and at a depth and distance from any body of water to prevent contamination. All such private disposal sites must receive prior approval by the Solid Waste Director, and all solid wastes deposited must be covered with at least six inches of compacted dirt daily.

H.

Other disposal of solid waste prohibited. Any other disposal of solid waste is expressly prohibited.

§ 165-19 Facility regulations.

[Amended 12-17-1997]

A.

Conformity with facility procedures required. Solid waste shall be disposed of at the Henderson County facility in the manner and according to procedures established by the Solid Waste Director.

B.

Facility tours. Facility tours or visitors to the facility must be accompanied by an employee of the Solid Waste Department.

C.

Affiliation with County required. The County facility may be used for the disposal of solid waste generated in Henderson County by County residents and nonresident owners of property in Henderson County.

D.

Hours of operation. The facility shall be open during business hours as established by the Board. The facility holiday schedule will be determined by the County Manager and revised annually and will be posted in the scalehouse. In emergencies, the facility may be opened and closed for additional hours as directed by the County Manager or the Manager's representative.

E.

Security of facility. Except when open during regular business hours, the facility shall be kept locked, and entry shall not be permitted.

F.

Tipping fee. A tipping fee or per vehicle fee shall be charged to all users of the facility. This tipping fee shall be based on the number of tons of material brought for disposal, except that there may be a minimum fee. There will be no fee charged for acceptable recyclable materials that have been separated and properly prepared. The Board shall adopt a schedule of fees from time to time which shall be effective until amended or replaced. Fees shall not be waived for nonprofit organizations.

[Amended 10-2-2000]

G.

Use by multiple-dwelling properties, parks and camps. Where there is more than one premises located in a residential building, manufactured home park, recreational vehicle park, summer camp or campground, it shall be the responsibility of the owner or person in charge of each building, park or camp to contract with a permitted hauler and to pay for the regular collection of all solid waste from each premises. An owner of a multipremises building, park or camp may apply to the Solid Waste Director for an exemption if it can be shown that he is now disposing of solid waste in a safe and sanitary manner as outlined in this article. In the case where the owner of a multipremises building, park or camp hauls his own solid waste, said waste must be weighed at the scalehouse, and the hauler may not use the boxes set aside for household solid waste.

H.

Loitering and rummaging prohibited. No person may loiter or rummage about the facility or remove articles therefrom.

I.

Speed limit within facility. All persons entering or traveling on facility property shall observe posted speed limits and shall operate their vehicles in a safe and courteous manner.

J.

Vehicles which are not self-unloading will not be allowed in the transfer station. All vehicles which do not use the household containers and are not self-unloading shall arrive at the County facility no later than 30 minutes before the close of the normal operating day. Vehicles which are not self-unloading will be subject to control by the Facility Foreman so as to minimize vehicle congestion and provide easy access to the designated disposal site for self-unloading vehicles.

K.

Only authorized Henderson County personnel will be allowed on the tipping floor of the transfer station, except that a waste hauler may exit his or her truck for mechanical adjustment of his or her vehicle.

L.

Uncovered waste prohibited. No vehicle shall be allowed to deposit waste at the County facility unless the waste is enclosed in the vehicle or secured by methods stated in § 165-17C. The Solid Waste Director shall determine the adequacy of the covering, and his decision shall be final.

M.

Deposit waste only in authorized areas. No person may deposit material at any point in the facility except where indicated by authorized employees of the facility or by official signs.

N.

Discharge of firearms, explosives and fireworks prohibited. No person may discharge firearms, fireworks or explosives on facility property.

O.

Solid waste subject to inspection. Solid waste shall be observed and inspected for prohibited materials. Persons disposing of unacceptable material may be required to remove such materials at the discretion of the Solid Waste Director or Facility Foreman.

P.

Prohibited waste. The following waste may not be disposed of in the County facility:

(1)

Burning or smoldering materials or any other materials that would create a fire hazard.

(2)

Hazardous waste.

(3)

Used motor oil (except for recycling).

(4)

Lead-acid batteries.

(5)

Liquid waste.

(6)

White goods (except for recycling).

(7)

Radioactive waste.

(8)

Sharps not properly contained.

(9)

Whole tires which may not be codisposed with solid waste.

(10)

Sludges.

(11)

Dead animals.

(12)

Yard waste, except in the wood waste grinding area.

[Amended 11-18-1998]

(13)

Metal drums of 50 gallons or more capacity unless drain holes are provided to prevent containers from holding liquid or unless filled with identifiable solid waste which is otherwise acceptable.

(14)

Stumps, brush, limbs, yard waste, landscape waste and construction and demolition material mixed with solid waste unless separated prior to disposal.

(15)

Automobiles, truck or other motor vehicle bodies or large pieces of metal, such as manufactured homes and farm equipment.

(16)

Wood waste greater than 10 inches in diameter at the butt end and greater than four feet in length. Wood waste greater than two inches in diameter shall not be greater than four feet in length.

(17)

No ash, flyash or incinerator ash.

(18)

Regulated medical waste.

(19)

Friable asbestos.

(20)

Sawdust.

(21)

Dirt or soil products (may be reviewed on a load-by-load basis).

(22)

Corrugated cardboard generated from commercial, industrial and institutional sources, unless there are no materials recovery facilities located in Henderson County. Residential sources of corrugated containers will be allowed in de minimis amounts only. The following items shall not be considered corrugated cardboard:

[Amended 11-18-1998]

(a)

Waxed coated cardboard.

(b)

Cardboard soiled with grease, oils, food waste, chemicals, poisons or pesticides.

(c)

Cardboard adhered to polystyrene or other plastic.

(d)

Posterboard, pasteboard tubing or chipboard, such as cereal boxes. This is mixed paper and can be recycled.

(23)

Aluminum cans.

(24)

Antifreeze (ethylene glycol).

§ 165-20 Tires.

[Amended 12-17-1997]

Whole automobile and truck tires will be accepted at the designated tire recycling site. Tires must be removed from their rims and be free of water, dirt and debris. Anyone bringing in six or more tires must call in advance and will be required to fill out a tire certification form. Specialized tires, such as large, off-road and heavy equipment tires, will be accepted only if arrangements are made in advance by calling the recycling center. Persons bringing loads containing truck tires or specialized tires will be required to assist in the unloading of such tires and should call in advance.

§ 165-21 White goods and metals.

[Amended 12-17-1997]

White goods and large pieces of metal may be deposited at the designated area for recycling.

§ 165-22 Used motor oil; antifreeze.

Used motor oil may be deposited in the tank at the Recycling Center. This tank is for residential users only. No used motor oil will be accepted from commercial or industrial users. Antifreeze is also accepted at this location.

§ 165-23 Recycling encouraged.

Each person who owns, leases or manages a residence, residential unit or place of business, industry, commerce or other place providing goods or services, or institution, church, camp or school is strongly encouraged to remove recyclable materials from the solid waste generated and make them available for recycling.

§ 165-24 Recyclable materials.

Recyclable material shall consist of the following items and shall be prepared for recycling at the County drop-off sites as directed:

A.

Glass [all brown, clear and green container (bottles and jars) glass]: rinsed and caps removed. Labels do not have to be removed.

B.

Aluminum beverage and bimetal (tin or steel) food cans: rinse. Labels do not have to be removed.

C.

Plastic containers No. 1 PETE (soda containers) and No. 2 HDPE (milk and shampoo containers) and Nos. 3, 5 and 7 (mixed plastic): remove caps, rinse, step on containers to flatten them. Labels do not have to be removed.

[Amended 12-17-1997]

D.

Corrugated containers: flatten.

E.

Mixed paper: See definition.

F.

Newspaper: bundle with string or leave loose. Inserts may remain.

G.

Dry textiles: used clothing, paired shoes, hats, linens, etc.

[Added 12-17-1997

Editor's Note: This ordinance also provided for the redesignation of former Subsection G and Subsection H.

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H.

Other material: as it is added to the recycling program.

§ 165-25 Removal of recyclable materials prohibited.

No person, other than a County employee or the County's authorized agent, may remove recyclable material from a recycling collection center.

§ 165-26 Solid waste classification system.

The Solid Waste Advisory Committee shall establish a system of classification for classes of solid waste that shall be consistent with a system of classification in the Solid Waste Management Plan. The classification system shall be used as a basis for requiring that solid waste be delivered to an appropriate County disposal facility in accordance with the Solid Waste Management Plan.

§ 165-27 Permit required; exceptions.

A.

For the purpose of providing for the proper collection, transportation, recycling and/or disposal of solid waste within Henderson County, the Board may grant the right to collect, transport, recycle and/or dispose of solid waste for compensation.

B.

No person shall engage in commercial or industrial solid waste collection, residential household garbage or recyclable material collection for a fee without a permit issued from the Solid Waste Director pursuant to this article. Individuals transporting their own solid waste or recyclables are not required to hold a permit.

§ 165-28 Permit application.

A.

Application for a permit to engage in solid waste, residential household garbage or recyclable material collection shall be filed with the Solid Waste Director on forms approved by the Solid Waste Director. There shall be no fee charged to an applicant for a solid waste collection permit.

B.

Application information required. The applicant shall furnish the following information:

(1)

Name, address and telephone number of the applicant and whether a sole proprietorship, corporation or partnership, with disclosure of the ownership interest.

(2)

A list of the equipment possessed, available or to be obtained by the applicant, including the number and type of solid waste receptacles or other containers used for the storage or collection of solid waste, residential household garbage or recyclable material, and the number and type of vehicles used for the transportation and disposal of solid waste, residential household garbage or recyclable material. Each vehicle shall be identified by make, model and license tag number.

(3)

Number of employees the applicant expects to use in the business.

(4)

Experience of the applicant in solid waste, residential household garbage or recyclable material collection.

(5)

Other pertinent information as the Board may hereafter request.

§ 165-29 Inspections.

The Solid Waste Director shall issue such permit only when upon inspection he finds that the facilities, equipment and proposed operating methods of the applicant are in compliance with the requirements of this article.

§ 165-30 Equipment standards.

All trucks and other equipment used by the collector must meet minimum standards prescribed by the Henderson County Solid Waste Management Department. These standards shall require, at a minimum, that truck beds be covered. Vehicles shall be leakproof, durable and easily cleaned to prevent insect breeding, odor or other nuisance and shall be maintained in good repair as determined by the Solid Waste Director.

§ 165-31 Display of permit number.

[Amended 11-18-1998]

The permit number of the collector shall be visible on both sides of each of the collector's trucks in numbers not less than three inches high, the color of the numbers to contrast with the color of the truck, and shall be kept clean and legible at all times.

§ 165-32 Existing collectors.

The Solid Waste Director will issue permits to existing collectors who are in business in Henderson County upon the effective date of this article upon assurance of their compliance with the above sections.

§ 165-33 Appeals.

When any person has made application for a permit to collect or transport solid waste or recyclable materials and the Solid Waste Director has refused to issue said permit to the applicant, the applicant may appeal the refusal by submitting a notice of appeal to the Solid Waste Director. The appeal shall be heard by the Henderson County Board of Commissioners. The notice of appeal must be filed within 10 days after the refusal of the Solid Waste Director to issue the permit.

§ 165-34 Permit renewal and term; permits not assignable.

A.

Permits will be issued upon successful completion of the permit application and inspection by the Solid Waste Director or his authorized agent.

B.

All permits, regardless of the date issued, must be renewed every January and will be valid for a period of one year.

C.

No permit issued pursuant to this article shall be assignable.

§ 165-35 Revocation of permit; appeals.

A.

Whenever, upon inspection of the facilities, equipment or operating methods of any person collecting, transporting or disposing of solid waste or recyclable materials, the Solid Waste Director finds that conditions or practices exist which are in violation of the provisions of this article, the Solid Waste Director shall give notice in writing to such person that unless such conditions or practices are corrected within 30 days the operating permit of such person shall be revoked. Haulers will be allowed to collect, transport and dispose of solid waste or recyclable materials during this thirty-day period. No such permit shall be reinstated by the Solid Waste Director until he finds, upon reinspection, that all provisions of these regulations have been complied with, except that following a hearing as hereinafter provided such permit may be reinstated by order of the Solid Waste Department. The Solid Waste Director shall be the only person authorized to enforce this subsection.

B.

Any revocation of a solid waste hauler's permit may be appealed to the Henderson County Board of Commissioners by the submission of a notice of appeal to the Solid Waste Director within 10 days of the effective date of the revocation. If a notice of appeal is not filed within 10 days, the permit shall be deemed to have been automatically revoked.

§ 165-36 Violations and penalties.

A.

This article may be enforced by any methods authorized by N.C.G.S. 153A-123 or 153A-277. Such methods shall be carried out in accordance with the procedures outlined in Chapter 1, General Provisions, Article II, and as provided below.

Editor's Note: Original Sections 1001, Criminal Penalties, 1002, Civil Penalties, and 1003, Equitable Remedies, which immediately followed this subsection, were deleted 11-18-1998.

[Amended 11-18-1998]

B.

Violations of this article by a permitted hauler may subject the hauler to a revocation of his permit in accordance with § 165-35 and may, in addition, subject the hauler to any actions specified in Chapter 1, General Provisions, Article II.

§ 165-37 Delinquent accounts.

[Amended 12-17-1997]

Section 165-19 of this article provides the payment of a tipping fee by users of the facility. The Solid Waste Department shall have the authority to set up accounts with regular users of the facility to be billed on a monthly basis. When any account becomes more than 10 days past due, the Solid Waste Department and its billing and collecting agent shall be authorized to discontinue service to the holder of the delinquent account until such time as the account is paid in full. Further, the Solid Waste Department shall be authorized to use any means that a private citizen could use to collect a debt, including, but not limited to, the institution of a civil action to collect the moneys owed.

§ 165-38 Responsibility for refuse found outside sanitary landfill.

A.

If any object of refuse is discovered upon any lands or waters in any areas of Henderson County other than an approved sanitary landfill or other proper receptacle and said refuse bears the name, address or other means of identification of a person or persons, the person(s) so identified shall be presumed to have disposed of said refuse in violation of this article.

B.

Bags, boxes, bins, cartons and other containers used to carry food, clothing and other goods and printed matter purchased, rented or otherwise obtained from a restaurant, supermarket, store or other place of business or organization, which container or printed matter bears the logo, name and address or other means of identification of the place from which the goods were obtained, shall not be considered as a means of identification for purposes of this section.

§ 165-39 Assistance for correction of violation.

On receipt of a notice of a violation, a person may request the aid of the Solid Waste Department in correcting the violation and shall pay to the Solid Waste Department any costs incurred by the Solid Waste Department in removing or otherwise correcting the violation.