Chapter 95
Solid Waste
Article I - Incinerators


§ 95-1. Title and Jurisdiction.
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.)

§ 95-2. 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.

§ 95-3. 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 minimum 5 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.

(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 meet 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.
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.

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

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

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.

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.
   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 100 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,
gradients and surface configuration.

(5) Topographic map. A topographic map with contours at vertical intervals of not
more than 5 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 contaminant movement, based on preconstructed boring and
groundwater modeling.

(4) Potential surface water effects: planned exclusion systems for surface water runoff;
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 feedstock:

  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.
10 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.
§ 95-4. 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.

§ 95-5. 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.

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.

§ 95-6. 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.

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.

§ 95-8. Enforcement; Violations and Penalties.
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 Henderson County Code, Chapter 1, General Provisions, Article II, except that the civil penalty for violations of this article shall be $5,000.