

CHAPTER 98: HAZARDOUS MATERIALS EMERGENCIES

98:01	Title
98:02	Purpose
98:03	Authority
98:04	Definitions
98:05	Controlling and eliminating hazardous materials emergencies
98:06	Authority to enter public or private property
98:07	Responsible financial party
98:08	Minimum charges
98:09	Payment of charges
98:10	Severability clause

98:01 TITLE

This chapter shall be known as the Hazardous Materials Emergencies Chapter of Ashe County, North Carolina.

98:02 PURPOSE

It is the purpose of this chapter to protect the health, safety and welfare of Ashe County citizens and to minimize public and private losses as a result of a hazardous materials incident.

98:03 AUTHORITY

Pursuant to the authority granted in North Carolina General Statute Chapter 166A, the Emergency Management Act, and North Carolina General statute 153A-121, Delegation and Exercise of the General Police Power, the Board of Commissioners of Ashe County enacts the following.

98:04 DEFINITIONS

CLEAN-UP OPERATION. An operation in which hazardous substances are removed, contained incinerated, neutralized, stabilized, cleared-up, or in any other manner processed or handled with the ultimate goal of making the site safer for people or the environment.

DISCHARGE. Shall mean, 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 into waters outside the

territorial limits of the County which affect lands, waters or uses related thereto within the territorial limits of the County, or upon land in such proximity to waters that oil or other hazardous substances is reasonably likely to reach the waters, but shall not include amounts less than quantities which may be harmful to the public health or welfare as determined pursuant to G.S. 143-215.77A; provided, however, that this Ordinance shall not be construed to prohibit the oiling of driveways, roads or streets for reduction of dust or routine maintenance; provided further, that 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 in accepted agricultural, horticultural, or 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; provided, further, that the use of a pesticide regulated by the North Carolina Pesticide Board in a manner consistent with the labeling required by the North Carolina Pesticide Law shall not constitute a "discharge" for purposes of this Article. The word "discharge" shall also include any discharge upon land, whether or not in proximity to waters, which is intentional, knowing or willful.

HAVING CONTROL OVER. Any person using, transferring, storing or transporting a hazardous material or oil immediately prior to release of such hazardous material onto the land or into the air.

HAZARDOUS MATERIAL. Any substance which constitutes a hazard, when discharged in any or the waters, and shall specifically include carriers and bailees of such oil or other hazardous material.

HAZARDOUS MATERIAL EMERGENCY. Any uncontrolled release or discharge of a hazardous substance that endangers the health or safety of persons or the environment and requires outside assistance by a local fire department or hazmat team to control and contain.

HAZARDOUS MATERIAL RESPONSE. The sending of Emergency Services or Fire Department personnel and equipment to abate hazardous materials incidents which endanger the health or safety of persons or environment.

REGIONAL RESPONSE TEAM. A hazmat team under contract with the State to provide response to hazardous materials emergencies within a specified region.

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

PERSON. Any individual, firm, partnership, association, institution, corporation, local government or governmental agency.

98:05 CONTROLLING AND ELIMINATING HAZARDOUS MATERIALS EMERGENCIES

It shall be the responsibility of the Ashe County Emergency Management Coordinator to control and eliminate hazardous materials (to include hazardous waste) emergencies with the assistance of local volunteer fire departments and any outside agencies deemed necessary by the Coordinator. Hazardous materials emergencies include, but are not limited to, spills, accidents, etc. The Emergency Management Coordinator or his/her designee shall have the authority to summarily remove, abate, or remedy hazardous material emergencies within the jurisdiction of Ashe County that are a threat to the public health or safety. For petroleum-based spills of 25 gallons or less, to which a local fire department has been dispatched, the local Fire Chief shall have the authority to summarily remove, abate or remedy the spill. The Emergency Management Coordinator or his/her designee and the local Fire Chief, shall determine the type, amount and quantity of equipment and personnel required to adequately abate, and remedy all hazardous materials or oil which are discharged into the environment. The expense of such action shall be borne by the party responsible for the incident.

98:06 AUTHORITY TO ENTER PUBLIC OR PRIVATE PROPERTY

The County of Ashe, through the Emergency Management Coordinator or his/her designee, is empowered to conduct such inspections and investigations as shall be reasonably necessary to determine compliance with the provisions of this Ordinance; to determine the person or persons responsible for violation of this Ordinance; to determine the nature and location of any oil or other hazardous substances discharged to the land or waters of the County of Ashe, and, to enforce the provisions of this Ordinance. The Emergency Management Coordinator or his/her designee and any other agencies/personnel deemed necessary by the Coordinator shall have the authority to enter public or private property, with or without the owner's consent, 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 discharges, or to perform any restoration necessitated by an oil or other hazardous substances discharge. Neither the County of Ashe nor its agencies, employees, agents or contractors shall be liable for trespass or damages arising out of the conduct of any inspection, investigation, project or activity.

The Emergency Management Coordinator or his/her designee and the local Fire Chief shall determine the type, amount and quantity of equipment and personnel required to adequately abate, and remedy all hazardous materials or oil

which are discharged into the environment. The expense of such action shall be borne by the party responsible for the incident.

98:07 RESPONSIBLE FINANCIAL PARTY

Any person who discharges, causes to be discharged or permits to be discharged, regardless of the fault of the person having control over the oil or hazardous material; and regardless of whether the discharge was the result of intentional or negligent conduct, accident or other cause, any oil or hazardous materials that creates an oil or hazardous materials emergency shall be held financially liable for the response, abatement, disposal and remedial costs incurred by local Emergency Services Agencies during the emergency. The person having control over such hazardous materials shall assist Emergency Services Agencies in control or abatement, removal and remedial measures associated with the oil or hazardous material emergency. Assistance shall consist of any or all of the following:

- A. Shall comply with the direction of the Emergency Management Coordinator or his/her designee.
- B. Shall supply emergency response plan information for the site.
- C. Shall supply emergency response equipment, personnel and materials on site.

98:08 MINIMUM CHARGES

The minimum charges for oil or hazardous materials emergency response on behalf of the Ashe County Emergency Services Agencies shall be based upon a schedule to be approved from time to time by the Ashe Board of Commissioners. The current schedule is as follows:

A. Primary Emergency Response

Aerial Ladder Truck	\$350 per hour
Emergency Response Vehicle	\$ 250.00/hr
Manpower (specialized)	\$ 25.00/mhr
Extinguishment	normal recharge fees

B. Specialized Equipment/Personal Safety

Protection (activities that require special protective equipment). Current reference as to EPA/OSHA protection levels based on EPA Protective Ensembles, which may change from time to time.

Level A/III	\$ 200.00 p/mhr or a fraction thereof
Level B/II	150.00 p/mhr or a fraction thereof
Level C/I	100.00 p/mhr or a fraction thereof
Level D	50.00 p/mhr or a fraction thereof

C. Emergency Clean-up/Containment Response

Manpower	same as above
Dry Absorbents	normal resupply fee
Wet Absorbents	normal resupply fee
Special Absorbents	normal resupply fee

D. Contaminated Equipment

The party responsible for the spill/incident shall also be financially responsible for replacement of any routine or specialized equipment that becomes contaminated during response, containment, abatement and recovery efforts.

E. Reimbursement rates for Regional Response Team are set by the team.

F. Reimbursement for paid personnel shall be at 1 ½ times the hourly rate.

G. Any equipment that is used but not listed (trucks, backhoe, etc.) will be reimbursed at hourly rate specified by hired contractor.

NOTE: These are minimum charges. If actual costs exceed these minimums, the responsible party shall be liable for any additional cost. In the event the schedule of minimum charges set forth amount to less than the actual cost for the oil hazardous materials emergency response, then the actual cost to the response shall be the charge.

98:09 PAYMENT OF CHARGES

A. A statement of charges assessed by the responding agencies and/or the County of Ashe for oil or hazardous materials emergency response shall be mailed to the responsible party and/or their insurance company, and shall be due and payable within thirty (30) days of the date of assessment. If the responsible party contests charge, he shall have ten (10) days from receipt of the assessment to give notice of appeal, in writing, to the Ashe County Administration Office. A hearing shall be held and a written decision made by the County Manager within fifteen (15) days thereafter. If the responsible

party is not satisfied with the decision of the County Manager the matter will be placed on the agenda for the next regular meeting of the Ashe Board of Commissioners for further consideration. A final decision shall be made within thirty (30) days thereafter.

- B. Any unpaid charge shall bear interest from the due date at the highest rate permitted by law. Further, if the owner of the real property upon which the abatement of the emergency took place is determined in any report to be responsible for the discharge of oil or hazardous material therein, then, and in that event; any charge not paid within thirty (30) days from the date of assessment shall be a lien upon the land or premises where the abatement took place, and shall be collected as unpaid taxes pursuant to the authority of N.C.G.S. 153A-140. The County shall charge for the removal, abatement, or remedy of hazardous material emergencies in amounts adequate to reimburse the County and local Emergency Services Agencies for actual costs incurred by the County for removal, abatement, or remedy.

Said charges shall be adopted and amended from time to time by action of the Board of County Commissioners of Ashe County.

98:10 SEVERABILITY CLAUSE

Should any section or provision of the Hazardous Materials Emergencies Ordinance be decided by a court of competent jurisdiction to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole or a part thereof other than the part so declared to be unconstitutional or invalid.

Clerk

Chairman

Vice-Chairman

Member

Member

Member