

Lee County Board Of County Commissioners
Agenda Item Summary

Blue Sheet No. 20070208

1. ACTION REQUESTED/PURPOSE: Request authorization to advertise for and conduct a Public Hearing on Tuesday, March 13, 2007, at 5:00 p.m. in Chambers to consider the adoption and execution of the proposed "Hazardous Waste Ordinance".

2. FUNDING SOURCE: No funding source required.

3. WHAT ACTION ACCOMPLISHES: Schedules Public Hearing for Board to formally adopt the Hazardous Waste Ordinance.

4. MANAGEMENT RECOMMENDATION: Set Public Hearing date and time for Tuesday, March 13, 2007 at 5:00 p.m.

5. Departmental Category: C12B		6. Meeting Date: FEBRUARY 20, 2007
7. Agenda:	8. Requirement/Purpose: (specify)	9. Request Initiated:
<input checked="" type="checkbox"/> Consent	Statute	Commissioner _____
<input type="checkbox"/> Administrative	<input checked="" type="checkbox"/> Ordinance	Department County Attorney
<input type="checkbox"/> Appeals	Admin. Code	Division General Services
<input type="checkbox"/> Public	Other	By: Jed R. Schneck
<input type="checkbox"/> Walk-On		Assistant County Attorney

10. Background:

The Pollution Prevention Program formerly known as the Small Quantity Generator Program has been performing State mandated (Florida Statutes 403.7225) verification assessments of operations at business sites for the past 18 years. The method utilized for the verification process was educational based and designed to assist businesses with information needed to meet minimum Federal/State hazardous waste laws. During this time it has become apparent that in order to motivate compliance for some businesses, local enforcement needs to be established. Florida Statutes 403.7238 allows for counties to adopt a local ordinance addressing compliance with and enforcement of the Federal and State hazardous waste regulations.

The adoption of this ordinance will establish the mechanism to assist the State Department of Environmental Protection and empower the County to work as partners with the State in protecting the environment.

11. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services			County Manager/P.W. Director	
					Analyst	Risk	Grants	Mgr.	
				<i>[Signature]</i> 2/8/07	<i>[Signature]</i> 2/8/07	<i>[Signature]</i> 2/8/07	<i>[Signature]</i> 2/8/07	<i>[Signature]</i> 2/8/07	2-8-07

12. Commission Action:

- Approved
- Deferred
- Denied
- Other

CO. ATTY.
FORWARDED
TO CO. ADMIN.
2-8-07

RECEIVED BY
COUNTY ADMIN: *[Signature]*
2/8 2:35 MP.
COUNTY ADMIN
FORWARDED TO: *[Signature]*
2/8 4pm

LEE COUNTY ORDINANCE NO. _____

AN ORDINANCE PROVIDING FOR THE AUTHORITY OF LEE COUNTY TO ADDRESS THE COMPLIANCE AND THE ENFORCEMENT OF THE FEDERAL AND STATE REGULATIONS FOR GENERATORS AND TRANSPORTERS OF HAZARDOUS WASTE, OWNERS AND OPERATORS OF HAZARDOUS WASTE FACILITIES, GENERATORS OF UNIVERSAL WASTE AND GENERATORS OF USED OIL; PROVIDING FOR CONFLICT OF LAW AND SEVERABILITY; PROVIDING FOR CODIFICATION AND SCRIVENER'S ERRORS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Lee County's rapid growth and expanding commercial and industrial activities have resulted in the increase of hazardous waste, universal waste, and used oil; and

WHEREAS, the increased participation is needed by local governments in ensuring that the increase in hazardous waste, universal waste, and used oil is being properly managed in order to protect Lee County's environment; and

WHEREAS, the Lee County Board of County Commissioners finds it necessary to authorize County officials to assure compliance with and enforce the federal and state hazardous waste regulations.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF LEE COUNTY, FLORIDA:

SECTION ONE: SHORT TITLE

This Ordinance shall be known and may be cited as the "Hazardous Waste Ordinance".

SECTION TWO: AUTHORITY

The Board of County Commissioners has the authority to adopt this Ordinance pursuant to the provisions of Chapter 125 and Chapter 403, Florida Statutes, and Florida Administrative Code 62-731.

SECTION THREE: SCOPE

This Ordinance shall apply to all of the unincorporated area of Lee County. It shall also apply to the areas of those municipalities within Lee County which enter into an interlocal agreement with Lee County to implement this Ordinance.

SECTION FOUR: INTENT AND PURPOSE

The Hazardous Waste Ordinance grants the County the authority to administer, including enforcement or compliance assistance, proper waste management practices for generators of hazardous waste, including universal waste and used oil.

SECTION FIVE: RULES OF CONSTRUCTION

1. a) The provisions of this article shall be liberally construed so as to effectively carry out their purpose in the interest of the public health, safety and welfare.
- b) For the purposes of administration and enforcement of this article, unless otherwise stated, the following rules of construction shall apply to the text of this article:
 - (1) In case of any difference of meaning or implication between the text of this article and any caption or heading, the text shall control.

- (2) The word "shall" is always mandatory and not discretionary; the word "may" is permissive.
- (3) Words used in the present tense shall include the future; the words in the singular number shall include the plural and the plural the singular, unless the context clearly indicates the contrary.
- (4) The word "person" includes an individual, a corporation, a partnership, an incorporated association or any other similar entity.
- (5) Unless the context clearly indicates the contrary, where a regulation involves two (2) or more items, conditions, provisions or events connected by the conjunction "and," "or," or "either . . . or," the conjunction shall be interpreted as follows:
 - a. "And" indicates that all the connected terms, conditions, provisions or events shall apply.
 - b. "Or" indicates that the connected items, conditions, provisions or events may apply singly or in any combination.
 - c. "Either . . . or" indicates that the connected items, conditions, provisions or events shall apply singly, but not in combination.
- (6) The word "includes" shall not limit a term to the specific example, but is intended to extend its meaning to all other instances or circumstances of like kind or character.

SECTION SIX: ADOPTION BY REFERENCE: FLORIDA ADMINISTRATIVE CODE RELATING TO HAZARDOUS WASTE, UNIVERSAL WASTE, AND USED OIL

The Board of County Commissioners hereby adopts by reference, as a part of this Ordinance, all applicable provisions of Chapters 62-710 and 62-730 of the Florida Administrative Code as adopted by the Florida Department of Environmental Protection (DEP). References to 40 CFR Part 261 shall mean rules adopted by DEP regarding identification of hazardous wastes, references 40 CFR Part 262 shall mean rules adopted by DEP regarding generators of hazardous wastes, references to 40 CFR Part 263 shall mean rules adopted by DEP regarding transporters of hazardous waste, references to 40 CFR Part 264 and 265 shall mean rules adopted by DEP regarding treaters, storers and disposers of hazardous wastes, references to 40 CFR Part 266 shall mean rules adopted by DEP regarding standards for the management of specific hazardous waste, references to 40 CFR Part 268 shall mean rules adopted by DEP regarding land disposal restrictions, references to 40 CFR Part 279 shall mean rules adopted by DEP regarding generators and handlers of used oil and references to 40 CFR Part 273 shall mean rules adopted by DEP regarding standards for universal waste management.

SECTION SEVEN: HAZARDOUS WASTE REQUIREMENTS

Persons who generate or transport hazardous waste or who own or operate a hazardous waste facility, shall comply with the applicable standards, requirements and procedures of this section.

I. CONDITIONALLY EXEMPT SMALL QUANTITY GENERATORS (CESQG) 40 CFR 261.5. *CESQG's generate less than 100 kilograms of hazardous waste per month and less than 1 kilogram of acute hazardous waste per month.* CESQG's shall comply with the following standards:

1. Perform hazardous waste determination in accordance with 40 CFR 262.11.
2. Never accumulate greater than 1000 kg at any time or greater than 100 kg per month.
3. Ensure delivery of hazardous waste to a proper recycling facility or Treatment, Storage and Disposal Facilities (TSDF).
4. Keep records documenting proper disposal in accordance with FAC 62-730.

II. SMALL QUANTITY GENERATORS (SQG) 40 CFR 262. *SQG's generate 100 - 1000 kilograms of hazardous waste per month.*

1. Obtain a Department of Environmental Protection/United States Environmental Protection Agency (DEP/EPA) ID Number (40 CFR 262.12).
2. Perform hazardous waste determination (40 CFR 262.11), including Land Disposal Restrictions (LDR) waste analyses (40 CFR 268.7).
3. Meet pre-transport requirements for packaging, labeling, marking, and placarding (40 CFR 262, Subpart C).
4. Meet satellite accumulation rules (40 CFR 262.34(c)). Close and label these containers.
5. Label containers and tanks with the words "Hazardous Waste" and label containers with accumulation start dates (40 CFR 262.34(a)).
6. Maintain and operate the facility in a clean, safe manner (40 CFR 265.31).
7. Emergency equipment (40 CFR 265.32).
 - a) Telephone or hand-held two-way radio;
 - b) Internal communication or alarm system;
 - c) Fire and spill control equipment (e.g. fire extinguishers, hoses, sprinklers, etc.);

- d) Neutralizing agents, spill absorbents, overpack drums, standby 55-gallon drums, etc.;
 - e) Test and maintain the emergency equipment (40 CFR 265.33).
8. Maintain adequate aisle space for evacuation, inspecting drums, etc. (e.g. no less than three (3) feet) (40 CFR 265.35).
 9. Attempt to make arrangements with local fire and police departments, hospitals, and emergency response contractors/equipment suppliers, with regards to emergency arrangements, hazards of materials handled, layout of facility, etc. (40 CFR 265.37).
 10. Containers (e.g. drums, cans, etc.) must be kept closed and in good condition, inspected at least weekly, be compatible with hazardous waste stored, and separated from other incompatible wastes (e.g. keep cyanides away from acids) (40 CFR 265, Subpart I). Records must be kept of these inspections (FAC 62-730.160).
 11. A Land Disposal Restrictions (LDR) Certification or Notification must accompany the initial manifest for a restricted waste. Generators who treat waste to meet land disposal restrictions must submit a waste analysis plan to DEP (40 CFR 268.7).
 12. Use manifest system (unless there is a reclamation agreement pursuant to 40 CFR 262.20(e)), and ship only to a permitted facility (40 CFR 262, Subpart B).
 13. Never exceed the 6000 kg accumulation/180 day storage time limit.
 14. Emergency Planning:
 - a) Have at least one employee or a designee with authority as Emergency Coordinator (EC) on 24-hour call.
 - b) Next to the telephone, post:
 - (i) The EC name and phone number;
 - (ii) Fire department's number;
 - (iii) Location of the fire extinguishers; spill control equipment/material, and fire alarm (if any).

- c) Follow emergency procedures in 40 CFR 262.34(d)(5), including taking necessary steps to address spills and fires, and notifying the National Response Center (24-hour number: 800/424-8802) and the State Warning Point (850/413-9911).
 - d) Upon request, the DEP will provide contingency plan guidance if the facility wishes to develop a more comprehensive emergency plan than required of SQGs.
15. Training of personnel regarding proper hazardous waste handling and emergency response [40 CFR 262.34(d)(5)(iii)].
 16. Keep records (40 CFR 262.44), including manifests, test results, etc., a minimum of three (3) years.
 17. If tanks are used for management of hazardous waste, meet the tank requirements of 40 CFR 262.201. This includes daily and weekly inspections, required maintenance, spill response and closure standards.
 18. If a SQG fails to meet applicable requirements, the full generator standards (and possibly TSDf standards) may apply.

III. LARGE QUANTITY GENERATORS (LQG) 40 CFR 262. *LQG's generate 1000 kilograms or more of hazardous waste per month or 1 kilogram or more of acute hazardous waste per month.*

1. Perform hazardous waste determination (40 CFR 262.11), including LDR waste analyses (40 CFR 268.7).
2. Obtain a DEP/EPA ID number (40 CFR 262.12).
3. Use manifest system and ship to a permitted facility (40 CFR 262, Subpart B). State rules require the generator to complete areas D, F, H, I K, O, Q, R, and T on the form in addition to the other requirements.
4. Meet pre-transport requirements for packaging, labeling, marking, and placarding (40 CFR 262, Subpart C).
5. Meet satellite accumulation rules (40 CFR 262.34(c)). Close and label these containers.

6. Label containers and tanks with the words "Hazardous Waste" and label containers with accumulation start dates (40 CFR 262.34(a)).
7. Do not store hazardous waste more than 90 days (40 CFR 262.34(b)).
8. Keep all records (40 CFR 262, Subpart D) for at least three (3) years (including manifests, test data, biennial reports, etc.).
9. File a biennial report for hazardous waste shipped off site or managed on site in non-exempt treatment systems (FAC 62-730.160).
10. File exception report for late or missing manifests from the designated facility (40 CFR 262.42).
11. Meet personnel training requirements, including documentation of training (40 CFR 265.16).
12. Maintain and operate the facility in a clean, safe manner (40 CFR 265.31).
13. Emergency equipment (40 CFR 265.32).
 - a) Telephone or hand-held two-way radio;
 - b) Internal communication or alarm system;
 - c) Fire and spill control equipment (e.g. fire extinguishers, hoses, sprinklers, etc.);
 - d) Neutralizing agents, spill absorbents, overpack drums, standby 55-gallon drums, etc.;
 - e) Test and maintain the emergency equipment (40 CFR 265.33).
14. Maintain adequate aisle space for evacuation, inspecting drums, etc. (e.g. no less than three (3) feet) (40 CFR 265.35).
15. Attempt to make arrangements with local fire and police departments, hospitals, and emergency response contractors/equipment suppliers, with regards to emergency arrangements, hazards of materials handled, layout of facility, etc. (40 CFR 265.37).
16. Have a contingency plan meeting the requirements of 40 CFR 265, Subpart D. Upon request, DEP will provide contingency plan guidance. Emergencies that require implementation of the contingency plan must be reported to DEP. Updated contingency plans must be distributed when facility conditions or emergency coordinators change.

17. Containers (e.g. drums, cans, etc.) must be kept closed and in good condition, inspected at least weekly, be compatible with hazardous waste stored, and separated from other incompatible wastes (e.g. keep cyanides away from acids) (40 CFR 265, Subpart I). Records must be kept of these inspections (FAC 62-730.160).
18. Ignitable or reactive hazardous waste must be stored at least fifty (50) feet from the facility's boundary line (40 CFR 265, Subpart I).
19. Tanks must meet the requirements of 40 CFR 265, Subpart J (structural integrity; containment and detection of releases; inspections; response to leaks or spills; operating requirements; closure and post-closure care; special requirements for ignitable, reactive and/or incompatible wastes; waste analysis and trial tests).
20. Special cautions (including "no smoking" signs) are required for ignitable or reactive wastes (40 CFR 265.17).
21. Security (e.g. a locked fence) and bermed containment areas (with roof and impermeable floor) for hazardous waste storage areas are strongly recommended.
22. A Land Disposal Restrictions (LDR) Certification or Notification must accompany the initial manifest for a restricted waste. Generators who treat waste to meet land disposal restrictions must submit a waste analysis plan to DEP (40 CFR 268.7).
23. Meet applicable air emission standards under 40 CFR 265 Subparts AA, BB, and CC.

IV. TRANSPORTERS (40 CFR 263) (FAC 62-730).

1. Obtain ID number (40 CFR 263.11).
2. Use manifest system (40 CFR 263, Subpart B).
3. Maintain the ability to clean up hazardous waste discharges during transportation-related incidents (40 CFR 263, Subpart C).
4. Provide annual documentation of financial responsibility (FAC 62-730.170).
5. Submit annual status update to DEP (FAC 62-730.170).

6. Transporters storing waste greater than 24 hours at a transfer facility must notify DEP and meet any Treatment, Storage and Disposal Facilities requirements (FAC 62-730.171), including containment, operating record, contingency plan, training, security, and closure.
7. All transfer facilities operated in the state must have a unique ID number (FAC 62-730.171).
8. Transfer facilities must submit closure plan and contingency plan to DEP (FAC 62-730.171).
9. Transfer facilities must maintain a written record of when all hazardous waste enters and leaves the facility (FAC 62-730.171).

V. TREATMENT, STORAGE AND DISPOSAL FACILITIES (TSDF) (40 CFR 264 OR 265).

1. Obtain a DEP/EPA ID number (40 CFR 264.11).
2. Obtain a hazardous waste permit unless exempt (e.g. wastewater treatment units, elementary neutralization, etc.) and comply with permit conditions. Facilities receiving hazardous waste from off-site (including some recycling facilities) may be subject to TSDF requirements.
3. Must meet applicable generator standards in Section III., above.
4. Comply with general facility standards, including waste analyses, security, inspections, and personnel training (40 CFR 264, Subpart B).
5. Maintain emergency equipment, adequate aisle space, and make arrangements with local authorities (40 CFR 264, Subpart C).
6. Have a contingency plan meeting the requirements of 40 CFR 264, Subpart D.
7. Use manifest system and comply with recordkeeping requirements (40 CFR 264, Subpart E).
8. Comply with groundwater monitoring requirements (40 CFR 264, Subpart F).
9. Comply with closure and post-closure requirements (40 CFR 264, Subpart G).

10. Maintain financial assurance for closure, post closure (if applicable) and liability (40 CFR 264, Subpart H).
11. Comply with container management standards (40 CFR 264, Subpart I).
12. Comply with tank management standards (40 CFR 264, Subpart J).
13. Comply with additional requirements for individual units such as surface impoundments, waste piles, containment buildings, incinerators, drip pads, etc. (40 CFR 264, Subpart K - 40 CFR 264, Subpart DD).
14. Make applicable air emission standards (40 CFR 264, Subpart AA, BB, and CC, Subpart CC effective December, 1996).
15. Meet applicable LDR requirements for treatment facilities, or as generators for wastes sent off site for further treatment (40 CFR 268).

SECTION EIGHT: USED OIL REQUIREMENTS

No person may collect, transport, store, use, recycle, or dispose of used oil, used oil filters or oily wastes except as authorized in FAC 62-710 and Chapter 403, Florida Statutes.

SECTION NINE: UNIVERSAL WASTE REQUIREMENTS

1. All handlers of universal waste shall comply with the requirements under 40 CFR 273 and FAC 62-737.
2. Universal waste means the following hazardous wastes that are subject to the standards of 40 CFR 273 and FAC 62-737.
 - a) Batteries as described in 40 CFR 273.2.
 - b) Pesticides as described in 40 CFR 273.3.
 - c) Thermostats as described in 40 CFR 273.4.
 - d) Lamps as described in 40 CFR 273.5.
 - e) Mercury-containing devices as described in FAC 62-737.200(9).

SECTION TEN: ENFORCEMENT

The provisions of this Ordinance shall be enforced by all duly authorized or designated law enforcement officers within Lee County.

SECTION ELEVEN: CIVIL REMEDIES

The Board of County Commissioners may institute in any Court or before any Administrative Board of competent jurisdiction action to prevent, restrain, correct or abate any violation of this Ordinance or of any order or regulations made in connection with its administration or enforcement, and the Court or Administrative Board shall adjudge such relief by way of injunction, or any other remedy allowed by law, or otherwise, to include mandatory injunction as may be proper under all the facts and circumstances of the case in order to fully effectuate the regulations adopted hereunder, or any amendment thereto, and any orders and rulings made pursuant thereto.

SECTION TWELVE: PENALTIES

Any person, including but not limited to any firm, corporation, association, or other group or body, who violates the provisions of this Ordinance shall be subject to the civil and criminal penalties under Florida Statutes 403.727 and 403.758.

SECTION THIRTEEN: CONFLICT OF LAW

Any requirements or provisions of this Ordinance that are in conflict with the requirements or provisions of any other lawfully adopted Ordinance or Statute, the most restrictive requirements will apply.

SECTION FOURTEEN: SEVERABILITY

The provisions of this Ordinance are severable and it is the intention of the Board of County Commissioners of Lee County, Florida, to confer the whole or any part of the powers herein provided. If any of the provisions of this Ordinance shall be held unconstitutional by any court of competent jurisdiction, the decision of the court shall not affect or impair the remaining provisions of this Ordinance. It is hereby declared to be the legislative intent of the Board of County Commissioners that this Ordinance would have been adopted had such unconstitutional provision not been included therein.

SECTION FIFTEEN: CODIFICATION AND SCRIVENER'S ERRORS

It is the intention of the Board of County Commissioners that the provisions of this Ordinance will become and be made a part of the Lee County Code; and that sections of this Ordinance may be renumbered or re-lettered and that the word "Ordinance" may be changed to "section", "article", or such other appropriate word or phrase in order to accomplish such intention; and regardless of whether such inclusion in the Code is accomplished, sections of this Ordinance may be renumbered or re-lettered and typographical errors which do not affect the intent may be authorized by the County Manager, or the County Manager's designee, without need of public hearing, by filing a corrected or re-codified copy of same with the Clerk of Circuit Court.

SECTION SIXTEEN: EFFECTIVE DATE

This Ordinance shall become effective immediately upon receipt of official acknowledgment from the Office of the Secretary of State that the Ordinance has been filed.

Commissioner _____ made a motion to adopt the foregoing Ordinance, seconded by Commissioner _____. The vote was as follows:

ROBERT P. JANES	_____
BRIAN BIGELOW	_____
RAY JUDAH	_____
TAMMARA HALL	_____
FRANK MANN	_____

DULY PASSED AND ADOPTED THIS _____ day of _____, 2007.

ATTEST: CHARLIE GREEN
CLERK OF COURTS

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
Deputy Clerk

BY: _____
Robert P. Janes, Chair

APPROVED AS TO FORM:

BY: _____
Office of the County Attorney