

Chapter 12

ENVIRONMENT*

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ARTICLE I. IN GENERAL

Secs. 12-1—12-30. Reserved.

ARTICLE II. NOISE*

Sec. 12-31. Purpose, statutory authority, and name of article.

The purpose of this article is to regulate, restrict and, where necessary, prohibit or abate the production and emission of amplified speech, music and other noises and sounds in the unincorporated areas of the county that tend to annoy, disturb, or frighten citizens. This article is adopted pursuant to the authority contained in G.S. 153A-133, G.S. 153A-123 and G.S. 14-4 and shall be known as the Lee County Noise Control Ordinance. (Ord. of 10-4-2010)

Sec. 12-32. Definitions.

In addition to the common meaning of words, the following definitions shall be used in interpreting this article:

Commercial sport shooting range means an area or structure designed for the use of rifles, shotguns, pistols, silhouettes, skeet, trap, black powder, or any other similar sport shooting, which is operated as a business venture and, where required by law, is properly licensed and permitted.

Construction means onsite erection, fabrication, installation, alteration, demolition or removal of any structure, facility or addition thereto, including all related activities such as clearing of land, earth moving, blasting and landscaping. "Construction" also shall include building or maintenance of public streets, roads, highways, and public vehicular areas.

Daytime hours means from 7:00 a.m. until 10:00 p.m., local time.

***Editor's note**—An ordinance adopted Oct. 2, 2010, has been treated as superseding art. II, §§ 12-31—12-35, to read as herein set out. Former art II, §§ 12-31—12-35 pertained to similar subject matter and derived from an ordinance adopted Aug. 15, 1994; an ordinance adopted Aug. 18, 2003; and an ordinance adopted Sept. 15, 2008.

Emergency work means work made necessary to restore property to a safe condition; work required to protect, provide or prevent persons or property from danger or potential danger; or work by private or public utilities when restoring utility service.

Loudspeaker means a device actuated by an electrical signal that produces sounds controlled by the electric signal. The sounds produced are usually a reproduction of speech or music or other sound encoded in the electrical signal.

Nighttime hours means after 10:00 p.m. and until before 7:00 a.m., local time.

Person means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof or any legal successor, representative, agent or agency of the foregoing.

Property boundary line means an imaginary line along the ground surface, and its vertical extension, separating the real property owned or occupied by one person from that owned or occupied by another person, including real property divisions within buildings. Public rights-of-way and easements that divide the property are not property boundary lines.

Residential area. For the purpose of this article, "residential area" means any tract or parcel of land zoned for residential use or actually used for sleeping purposes including, but not limited to, land on which is located private homes, apartments and other multifamily structures, hospitals, nursing homes, rest homes, assisted living centers, hotels, motels, dormitories, or campgrounds, and shall further include any tract or parcel of land on which are located any school, library, or church which is open and operating.

Sound-magnifying device means any device or machine for the magnification of a human voice, music or any other sound. "Sound-magnifying device" shall not include emergency warning devices on police, fire, ambulance or other emergency vehicles.

(Ord. of 10-4-2010)

Sec. 12-33. Prohibited noises and sounds generally.

It shall be unlawful in the unincorporated areas of the county for any person to produce and cause or allow to cross the property boundary line of his property:

- (1) Any unreasonably loud, disturbing or raucous noise or sound that tends to seriously annoy, disturb, or frighten a reasonable individual of normal sensitivities; or
- (2) Noise or sound of such character, intensity or duration as to be detrimental to the health of any individual or which disturbs the quiet comfort or repose of a reasonable individual of normal sensitivities, or which interferes with the useful enjoyment of property.

(Ord. of 10-4-2010)

Sec. 12-34. Enumerated prohibited and unlawful noises and sounds.

In addition to any other noises and sounds prohibited by this article, the following acts are specifically declared to produce unreasonably loud, disturbing, or raucous sound or noise that seriously annoys, disturbs or frightens a reasonable individual of normal sensitivities, or to be detrimental to the health of any individual, or disturbs the quiet comfort or repose or useful enjoyment of property. Causing or allowing these sounds or noises to cross over the property boundary line of the property from which the sound or noise emanates is prohibited and unlawful. This enumeration shall not be deemed to inclusive of all the noises or sounds that violate this article.

- (1) Playing, operating, or permitting to be played or operated, any radio, television set, musical instrument, or a tape recorder, cassette player, compact disc player, digital video recording or other machine or device for the reproducing of sound during in or on:
 - a. Any public property including any public street, highway, building, sidewalk, park, thoroughfare, or public or private parking; or
 - b. Any motor vehicle on a public street, highway or public space, or within the motor vehicle area of any public or private parking lot or parks;

If, at the same time the noise or sound is generated, it is audible at a distance of 30 feet from the machine or device reproducing the sound.

- (2) Using or operating outdoors for any purpose any loudspeaker, loudspeaker system, noise amplification device, or similar device within any residential area, except for noncommercial public speaking, public assembly, or other activity for which a permit has been issued by appropriate authority.
- (3) Offering for sale, selling, or advertising any item by shouting or outcry within any residential area, except when a permit has been issued by appropriate authority.
- (4) Owning, possessing, or harboring in a residential area any dog, bird, or other animal which howls, barks, cries, meows, squawks, or makes other loud sounds or noises continuously for a period of ten minutes or more, or intermittently for one-half-hour or more, at any time. It shall not be a violation of this section if, at the time the animal is making the illegal noise, a person is trespassing or threatening to trespass upon private property in or upon which the animal is situated or has teased or provoked the animal. Any resident, owner, occupant, or tenant of property upon which the animal is situated shall be deemed a person in charge or otherwise exercising control over such animal. This provision shall not apply to public zoos or private animal attractions operated for profit to which the public has general admission and for which a permit has been issued by appropriate authority.
- (5) Operating or permitting the operation of any mechanically powered saw, drill grinder, lawn or garden tool, or similar tool in any residential area in the nighttime.

(Ord. of 10-4-2010)

Sec. 12-35. Exceptions.

(a) The prohibitions established in this article shall not apply to the following sources of sound:

- (1) Emergency warning devices or safety signals;

- (2) Lawnmowers, agricultural equipment, and landscape maintenance equipment when operated in the daytime with all the manufacturer's standard mufflers and noise-reducing equipment in use and in reasonable operating condition;
- (3) Equipment being used for construction, provided that all equipment is operated in accordance with manufacturer's specifications and with all standard equipment manufacturer's mufflers and noise-reducing equipment in use and in proper operating condition;
- (4) Parades, fairs, circuses, other similar public entertainment events, sporting events, or sporting activities taking place in areas set aside for such activities, or any activities normally associated with any of these activities;
- (5) Bells, chimes and similar devices which operate for a duration of no longer than five minutes in any hour;
- (6) Emergency work;
- (7) The provision of all government services including, but not limited to, noises produced by solid waste collection vehicles, fire, law enforcement, ambulance, rescue or other emergency vehicles, while such vehicles are engaged in their proper functions;
- (8) Emission of sound from any source or sources on public rights-of-way, except for those limited by subsection 12-34(1) herein;
- (9) Noise from trains and associated railroad rolling stock when operated in proper repair and manner;
- (10) All noises coming from the normal operations of properly equipped aircraft, not including scale model aircraft;
- (11) Normal operation of a commercial sport shooting range when operated with a permit from appropriate authority;
- (12) Any sounds associated with bona fide farm or agricultural activities including seasonal activities such as harvesting at the end of the growing season or planting during planting season;

(13) Nonamplified crowd noises resulting from activities and events sponsored by school, governmental, or community groups;

(14) Music produced by school bands while practicing or performing on school property.

(b) In any proceeding pursuant to this article, if an exception is asserted in defense of an alleged violation, the person making the assertion shall have the burden of persuasion that the exception applies and that the terms of the exception have been met. (Ord. of 10-4-2010)

Sec. 12-36. Creating public disturbance prohibited.

(a) The gathering of any group on the sidewalks, streets, or public places within the county for the purpose of creating, or which creates, mechanical, vocal or other sound which is of such intensity or nature to interfere with the rights of peaceful occupation of the property owners in the adjacent areas is unlawful. Any person who participates in, leads, directs or encourages such actions shall be in violation of this section.

(b) Nothing in this section shall prevent the orderly expression of spectators at regularly organized sporting events or the peaceful assembly of any group for orderly expression or communication between those assembled. (Ord. of 10-4-2010)

Sec. 12-37. Enforcement responsibility.

The Sheriff of Lee County shall have primary enforcement responsibility for violations of this article. Any Lee County Animal Control Officer shall have authority to enforce sections of this article relating to unlawful noise or sounds created by animals only through warnings, assessment of a civil penalty and initiation of equitable remedies. (Ord. of 10-4-2010)

Sec. 12-38. Authorized enforcement actions.

(a) No person violating this article shall be charged either civilly or criminally or be named a defendant in a civil action seeking an equitable remedy without first being warned by a law enforcement officer or

animal control officer that his action constitutes a violation of this article and given an opportunity to bring his conduct into compliance with this article.

(b) When a violator, after warning, fails to immediately bring his conduct into compliance with this article, one or more of the following enforcement actions may be taken:

(1) *Imposition of a civil penalty.*

- a. Any person violating any provision of this article shall be subject to a civil penalty in the amount of \$200.00. Any subsequent violation within a 12-month period of a first violation shall subject the violator to a civil penalty of \$400.00 and each subsequent violation after the second, regardless of when it occurs, subjects the violator to a penalty of \$500.00. Separate offenses shall be deemed committed on each day during or on which a violation occurs or continues.
- b. Imposition of a civil penalty shall be by issuance of a civil citation or notice of violation by a Lee County Deputy Sheriff or Lee County Animal Control Officer which shall state upon its face, as a minimum, the nature of the violation with a citation to the provision of this article alleged to be violated, the amount of the civil penalty, that the civil penalty shall be paid in person or via United States Mail to the Lee County Revenue Department at 106 Hillcrest Drive within five business days from the date the citation or notice of violation is issued, and notify the alleged violator that failure to pay the civil penalty within the prescribed time shall subject the alleged violator to a civil action in the nature of a collection of a debt to recover the stated penalty and the cost of the action as taxed by the court.

(2) *Issuance of a criminal citation or arrest.*

- a. Any person who violates this article, shall be guilty of a Class 2 misdemeanor and shall be punished by a fine of not more than \$200.00 for a first offense, \$400.00 for a second offense

committed within 12 months of a first offense conviction and \$500.00 for the third or subsequent conviction regardless of when the third or subsequent conviction is obtained. Imprisonment for up to 30 days is an additional authorized punishment for any violation. Separate offenses shall be deemed committed on each day during or on which a violation occurs or continues.

- b. A criminal charge shall be initiated by issuance of a criminal citation only by the Lee County Sheriff or deputy sheriff, except that the sheriff or deputy sheriff may arrest the alleged violator when he refuses to provide his name and address and any proof thereof as may be reasonably available to him; or the alleged violator refuses to promptly cease such illegal activity after being issued a civil or criminal citation.

(3) *Equitable and injunctive remedies.*

- a. Lee County, the Lee County Sheriff, a Lee County Deputy Sheriff or a Lee County Animal Control Officer may seek equitable remedies from the Superior Court of Lee County for violations of this article through a civil action in the Superior Court of Lee County.
- b. The institution of a civil action for equitable relief shall not relieve any party to such proceeding from any civil or criminal penalty prescribed for violations of this article.

(Ord. of 10-4-2010)

Sec. 12-39. Other remedies.

No provision of this article shall be construed to impair any common law or statutory cause of action or legal remedy of any person for injury or damage to person or property, arising from violation of this article or arising from sound crossing a property boundary that does not violate this article.

(Ord. of 10-4-2010)

Sec. 12-40. Severability.

It is hereby declared to be the intention of the board of county commissioners that the sections,

paragraphs, sentences, clauses and phrases of this article are severable and if any section, subsection, sentence, or clause of this article is adjudged to be unconstitutional or invalid, such adjudication shall not affect the validity of the remaining portions of this article. It is hereby declared that this article would have been passed, and each section, subsection, sentence, or clause hereof, irrespective of the fact that any one or more sections, subsections, sentences, or clauses might be adjudged to be unconstitutional or for any other reason invalid. (Ord. of 10-4-2010)

Secs. 12-41—12-60. Reserved.

ARTICLE III. OIL POLLUTION AND HAZARDOUS SUBSTANCES CONTROL*

DIVISION 1. GENERAL

Sec. 12-61. Title.

This article may be referred to as the "Lee County Oil Pollution and Hazardous Substances Control Ordinance." (Ord. of 9-15-2008(1), Pt. 1, § 1)

Sec. 12-62. Intent and purpose.

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

*Editor's note—Ord. of 9-15-2008(1), Parts 1—5, §§ 1—18, did not specifically amend the Code; hence, inclusion herein as Art. III was at the discretion of the editor. See also the Code Comparative Table.

pursuant to that act; and the state Oil Pollution and Hazardous Substances Control Act of 1978, G.S. 143-215.75 et seq.

(b) Further, it is the intent of this article that the director of emergency management or his designees shall have the authority to summarily abate or remedy hazardous materials or oil discharged into the environment in such a manner as to endanger the health, safety or welfare of the general public or in such a way as to constitute a public health nuisance. The director of emergency management, or his designees, shall determine the type, amount and quantity of equipment and personnel required to adequately abate and remedy all hazardous materials or oils discharged into the environment. (Ord. of 9-15-2008(1), Pt. 1, § 2)

Sec. 12-63. Territorial applicability.

This article is applicable to any part of Lee County which is not within the corporate limits of any city or town. (Ord. of 9-15-2008(1), Pt. 1, § 3)

Sec. 12-64. Definitions.

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

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

Bona fide farm purpose means the production and activities relating to or incidental to the production of crops, fruits, vegetables, ornamental and

flowering plants, dairy, livestock, poultry, and all other forms of agricultural products having a domestic or a foreign market.

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

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

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

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

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

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

municipal personnel, equipment and facilities contributed by or obtained from any municipality adopting this article pursuant to G.S. 153A-122.

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

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

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

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

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

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

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

Superior court means the county superior court.

Waters means any stream, river, creek, brook, run, canal, swamp, lake, reservoir, waterway, wetlands, or any other body or accumulation of water, surface or underground, public or private, natural or artificial, contained within, flowing through, or bordering upon this county.
(Ord. of 9-15-2008(1), Pt. 1, § 4)

Secs. 12-65—12-74. Reserved.

DIVISION 2. ENFORCEMENT PROCEDURES

Sec. 12-75. Criminal penalties.

Any person who violates the provisions of this article or fails to comply with any of its requirements shall, upon conviction, be guilty of a misdemeanor and shall be punished as provided in G.S. 14-4.
(Ord. of 9-15-2008(1), Pt. 2, § 5)

Sec. 12-76. Civil penalties.

(a) Any person who intentionally or negligently discharges oil or other hazardous substances, or knowingly causes or permits the discharge of oil in violation of this article or fails to report a discharge as required by section 12-102 or who fails to comply with the requirements of section 12-101 or orders issued by the department of emergency management as a result of violations of such requirements, shall incur, in addition to any other penalty provided by law, a penalty in the amount of \$1,000.00 for every such violation. Every act or omission that causes, aids or abets a violation of this subsection shall be considered a violation under the provisions of this subsection subject to the penalty provided in this section.

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

the board's deciding any request for reconsideration, the county manager shall request that the county attorney institute a civil action in superior court to recover the amount of the assessment.
(Ord. of 9-15-2008(1), Pt. 2, § 6)

Secs. 12-77—12-86. Reserved.

DIVISION 3. INVESTIGATIONS

Sec. 12-87. Inspections and investigations.

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

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

(Ord. of 9-15-2008(1), Pt. 3, § 7)

Sec. 12-88. Entry upon land.

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

(Ord. of 9-15-2008(1), Pt. 3, § 8)

Sec. 12-89. Confidentiality.

Any information relating to a secret process device or method of manufacturing or production discovered or obtained in the course of an inspection, investigation, project or activity conducted pursuant to this division shall not be revealed except as may be required by law or lawful order or process.

(Ord. of 9-15-2008(1), Pt. 3, § 9)

Secs. 12-90—12-99. Reserved.

DIVISION 4. OIL AND HAZARDOUS
DISCHARGE CONTROLS

Sec. 12-100. Discharges.

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

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

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

(c) *Permits.* Any person who desires or proposes to discharge oil or other hazardous substances onto the land or into the waters of this county shall first make application for and secure the permit required

by G.S. 143-215.1, and shall file a copy of the permit with the department of emergency management prior to discharge.
(Ord. of 9-15-2008(1), Pt. 4, § 10)

Sec. 12-101. Removal of prohibited discharges.

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

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

fare, or public property, or abate a public health nuisance, and shall be compatible with the National Contingency Plan established pursuant to the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq.

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

- (1) Shall comply with the direction and orders of the director of emergency management.
- (2) Shall supply emergency response plan information available for the site of any discharge.
- (3) Shall supply emergency response equipment personnel and materials available on the site.
- (4) Shall supply any information on the product or chemical released that may be available to that person.

(Ord. of 9-15-2008(1), Pt. 4, § 11)

Sec. 12-102. Required notice.

Every person owning or having control over oil or other substance discharged in any circumstances other than pursuant to a rule adopted by the state environmental management commission, a regulation of the U.S. Environmental Protection Agency, or a permit as described in subsection 12-100(c), or the Federal Water Pollution Control Act, upon notice that such discharge has occurred, shall immediately notify the department of emergency management of the nature, location and time of the discharge and of the measures being taken or are proposed to be taken to contain and remove the discharge. The designee of the department of emergency management receiving the notification shall immediately notify the director of emergency management or such member of the permanent staff of the department of emergency management as the director may designate. If the discharged substance of which the department of emergency management is notified is a pesticide regulated by the state pesticide board, the director of emergency management shall immediately inform the chair of the pesticide board. Re-

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

(Ord. of 9-15-2008(1), Pt. 4, § 12)

Secs. 12-103—12-112. Reserved.

DIVISION 5. COLLECTION OF EXPENSES

Sec. 12-113. Determination of expenses.

Upon completion of any oil or other hazardous substances removal or restoration project or activity or abatement conducted pursuant to the provisions of this division, each department of the county that has participated by furnishing personnel, equipment or material shall deliver to the emergency management department a record of the expenses incurred by the department. Upon completion of any oil or other hazardous substances removal or restoration project or activity, the director of emergency management shall prepare a statement of all expenses and costs of the project or activity expended by the county and shall transmit this to the county manager. (Ord. of 9-15-2008(1), Pt. 5, § 13)

Sec. 12-114. Demand for payment.

Upon receipt of the statement of expenses and costs from the director of emergency management, the county manager shall make demand for payment upon the person having control over the oil or other hazardous substances discharged to the land or waters of the county unless the discharge has occurred due to any of the reasons stated in subsection 12-100(b).

(Ord. of 9-15-2008(1), Pt. 5, § 14)

Sec. 12-115. Contested charges.

A person contesting a demand for payment made pursuant to section 12-114 shall have ten days from receipt of the demand for payment to request that the matter be considered by the board of commis-

sioners. The final decision of the board may be appealed to the superior court within 30 days of the date of that decision in an action in the nature of certiorari.

(Ord. of 9-15-2008(1), Pt. 5, § 15)

Sec. 12-116. Collection.

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

(Ord. of 9-15-2008(1), Pt. 5, § 16)

Sec. 12-117. Penalty.

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

(Ord. of 9-15-2008(1), Pt. 5, § 17)

Sec. 12-118. Conflict of laws.

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

(Ord. of 9-15-2008(1), Pt. 5, § 18)