

HAZARDOUS MATERIALS COST RECOVERY ORDINANCE
CHARTER TOWNSHIP OF FRENCHTOWN, MICHIGAN
Ord. No. 177; Date of Adoption: April 1996

An Ordinance to provide for recovery of expenses incurred by the Frenchtown Charter Township Fire Department in responding to an emergency hazardous substances and/or materials incident.

THE CHARTER TOWNSHIP OF FRENCHTOWN HEREBY ORDAINS:

Section 1. Findings and Purpose.

Frenchtown Charter Township finds that a potential exists for responses to incidents involving the release or threatened release of hazardous substances and/or materials. Such incidents create a great likelihood of personal injury or property damage. The control and abatement of such incidents places a significant financial and operational burden upon the Township's fire fighting, rescue and emergency medical services and other Township resources. The Township finds that it is necessary to adopt an ordinance to establish the liability for such incidents and to establish a policy and methods which will allow the Township to seek recovery of Township costs associated with emergency responses to hazardous substances and/or materials incidents.

Section 2. Definitions.

Compressed Gas shall mean any material regulated as a compressed gas by the United States Department of Transportation through regulations found in 49 CFR, Section 173.300.

Emergency Response shall mean the providing, sending and/or utilizing of police, fire fighting, emergency medical and rescue services by the Township, or by a private industrial entity, corporation or other assisting government agency operating at the request or direction of the Township or State of Michigan, for an incident resulting in a hazardous substances and/or materials release or threatened release or the clean-up or abatement of same.

Expenses of an Emergency Response shall mean the direct and reasonable costs incurred by the Township, or by a private person, corporation or other assisting government agency, which is operating at the request or direction of the Township, when making an emergency response to the hazardous substances and/or materials incident, including the costs of providing police, fire fighting, rescue services, emergency medical services, containment storage, clean-up and abatement of all hazardous conditions at the scene of the incident. The costs further include all salaries and wages of Township personnel responding to the incident, salaries and wages of Township personnel engaged in the investigation, supervision and report preparation regarding said incident, all salaries and wages of personnel of assisting government agencies operating at the request or direction of the Township, and all costs connected with the administration of the incident relating to any prosecution of the person(s) responsible, including those relating to the production and appearance of witnesses at any court proceedings in relation thereto. Costs shall also include such items as disposable materials and supplies used during the response to said incident, the rental or leasing of equipment used for the specific response, replacement of

equipment which is contaminated beyond reuse or repair during the response to said incident, special technical services and laboratory cost, and services and supplies purchased for any specific evacuation relating to said incident.

Hazardous Substances and/or Materials shall include, but are not limited to a chemical that is a combustible liquid, a flammable gas, explosives, flammables, oxidizing material, pyrophoric, unstable reactive or water reactive, radioactive materials, petroleum, petroleum products or gases, poisons and shall include all those materials designated as hazardous by the State of Michigan in Public Act 307 of 1982, as amended, or by the Federal Superfund Amendment.

Owner shall mean any person having a vested or contingent interest in the premises, real property, personal property, container or vehicle involved in the hazardous substances and/or materials incident, including but not limited to any duly authorized agent or attorney, purchaser, devisee or fiduciary of said person having said vested or contingent interest.

Oxidizing Material shall mean any material regulated as an oxidizing material by the United States Department of Transportation through regulations found in 49 CFR, Section 173.151.

Person shall mean individuals, firms, joint ventures, partnerships, corporations, clubs and all associations or organizations of natural persons, either incorporated or unincorporated, howsoever operating or named, and whether acting by themselves or by a servant, contractor, employee, agent or fiduciary, and includes all legal representatives, heirs, successors and assignees thereof.

Poison shall mean any liquid or gas that is life threatening when mixed with air in small amounts, and shall also include all those materials regulated as poison class A by the United States Department of Transportation through regulations found in 49 CFR, Section 173.326.

Premises shall mean any lot or parcel of land.

Radioactive Material shall mean any material required by the United States Department of Transportation to have type A packaging or other special protection or closed transport vehicles, under regulations found in 49 CFR, Section 173.425.

Release shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of a hazardous substance or material into the environment, or the abandonment or disposing of barrels, containers or other closed receptacles containing a hazardous substance.

Responsible Party shall mean the owner, operator, occupant or other person responsible for the operation, maintenance and/or condition of any building, premises, property or vehicle where an incident arises which involves the release or threatened release of hazardous substances and/or materials on or about said building, premises, property and/or vehicle.

Threatened Release shall mean any imminent or impending event potentially causing but not resulting in a release which causes the Township to undertake emergency response.

Township shall mean the Charter Township of Frenchtown.

Vehicle shall mean any mode which is used as an instrument of conveyance, including but not limited to motor vehicles, railroads, boats, aircraft, etc.

Section 3. Hazardous Substances and/or Materials Incidents Policy.

- A. In the event that Township employees are dispatched to a hazardous substances and/or materials incident, the Township employee in charge shall notify the responsible parties, including appropriate State and Federal agencies, as soon as possible. Township personnel shall make efforts to limit the Township's action to those necessary to address dangers from fire or the imminent threat of fire or the imminent threat from any hazardous substances or materials, and necessary evacuation of affected persons.
- B. Except for procedures necessitated by fire or the imminent threat of fire resulting from a hazardous substances or materials incident, Township officials are not authorized to incur any obligations, financial or otherwise, to the Township in regards to the mitigation of impacts resulting from a hazardous substances and/or materials incident.
- C. All Township personnel shall take appropriate steps for a hazardous substances and/or materials response that conforms to their level of training and as appropriate to the supplies and equipment to them, in accordance with established protocols and procedures.

Section 4. Liability For Expense of an Emergency Response.

- A. **Responsible Party:** The responsible party shall be required to reimburse the Township for all costs and expenses of an emergency response to said hazardous substances and/or materials incident.
- B. **Charge Against Person:** The expense of an emergency response shall be a charge imposed upon the responsible party under this Ordinance. The charge constitutes a debt of that responsible party and is collectible by the Township in the same manner as an obligation under contract, express or implied.
- C. **Cost Recovery Schedule:** The Township Board may by resolution adopt a schedule of the costs included within the expense of an emergency response. This schedule shall be available at the office of the Township Clerk for inspection by the public during regular office hours.
- D. **Billing:** The Township may within ten (10) days of receiving itemized costs, or any part thereof, incurred for an emergency response, submit a bill for these costs by registered or certified mail, return receipt requested or personal service to the person liable for the expenses as enumerated under this Ordinance. The bill(s)

shall require full payment within thirty (30) days from the date of mailing or service of said bill upon the responsible person.

- E. Failure to Pay: Procedure to Recover Costs: Any failure by the person described in this Ordinance as liable or responsible for expenses of an emergency response to pay said bill within thirty (30) days of mailing or service of the bill shall constitute a default on said bill. In case of default, the Township shall have the right and power to add all emergency response costs to the tax roll of such property involved in the hazardous substances and/or materials incident, and to levy and collect such costs in the same manner as provided for the levy and collection of real property taxes against said property or premises. The Township shall also have the right to bring action in a court of competent jurisdiction to collect said costs if the Township deems such action to be necessary.

Section 5. Conflict With State or Federal Law.

Nothing in this Ordinance shall be construed to conflict with state or federal laws requiring persons responsible for or causing a release or threatened release from engaging in remediation activities or paying the cost thereof, or both.

Section 6. Nonexclusive Remedy.

The remedies provided by this Ordinance shall be in addition to any other remedies available in equity or at law and such penalties as provided by law or ordinance.

Section 7. Repeal.

All Ordinances or parts of Ordinances in conflict with this Ordinance are to the extent of such conflict hereby repealed.

Section 8. Severability.

If any section, subsection, clause, paragraph or provision of this Ordinance is adjudged invalid by a court of competent jurisdiction, such adjudication shall only apply to the said portion thereof adjudicated invalid, and the full remaining portions or parts of this Ordinance shall remain in full force and effect.

Section 9. Effective Date.

This Ordinance shall become effective immediately upon publication in a newspaper having general circulation in Frenchtown Charter Township, Monroe County, Michigan.

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