

**TOWNSHIP OF ONEKAMA
MANISTEE COUNTY, MICHIGAN**

ORDINANCE NO. 2002 - 02

An Ordinance to Amend the Hazardous Materials Ordinance dated 1995 to establish charges for emergency services responses to incidents involving hazardous materials under Public Act 102 of 1990, MCL 41.806(a).

The Township of ONEKAMA ordains:

Section 1. INTENT.

Surface waters, groundwater, soils, vegetation, and atmosphere inside the Township are susceptible to damage from the handling, storage, use, processing, and disposal of hazardous material. The release or threatened release of hazardous materials creates a great likelihood of personal injury or property damage. The control and abatement of such incidents places a significant financial and operational burden upon a Township's fire fighting rescue and emergency medical services and other Township resources. It is the position of the Township that the expense incurred as a result of the Township or its Designee having to respond in an emergency to protect life, property, and the environment where there has been a release of hazardous materials should be recovered from the person or business entity responsible for the emergency.

Section 2. DEFINITIONS.

As used in this Ordinance, the following terms shall have the following meanings, unless the context clearly indicates that a different meaning is intended:

CFR shall mean the Code of Federal Regulations.

Designee shall mean the Onekama Township Fire and Rescue Unit or such other public or private agency authorized in writing by the Township to respond to hazardous materials incidents within the Township and those Townships served by the Onekama Township Fire and Rescue Unit under contract or mutual aid agreements.

Emergency Action shall mean all of the activities conducted in order to prevent or mitigate injury to human health or to the environment inside the Township or Townships served by the Fire and Rescue Unit from a release or threatened release of any Hazardous Material into or upon the environment.

Hazardous Material shall include any of the following:

1. Any material listed in the list of toxic pollutants found in 40 CFR §401.15, as amended.
2. Any material designated as hazardous material by applicable state law.
3. Any material recognized as a biological or chemical agent which constitutes a threat to human health or the environment.
4. Any compressed gas, explosive, flammable liquid, flammable solid, oxidizer, poison or radioactive material.
 - a) *Compressed Gas* shall mean any material regulated as a compressed gas by the United States Department of Transportation by regulations found in 49 CFR §173.300.
 - b) *Explosive* shall mean any material regulated as a class A or class B explosive by the United States Department of Transportation by regulations found in 49 CFR §173.53 and §173.88.
 - c) *Flammable liquid* shall mean any material regulated as a flammable liquid by the United States Department of Transportation by regulations found in 49 CFR §173.115.
 - d) *Flammable solid* shall mean any material regulated as a flammable solid by the United States Department of Transportation by regulations found in 49 CFR §173.150.
 - e) *Oxidizer* shall mean any material regulated as an oxidizer by the United States Department of Transportation by regulations found in 49 CFR §173.151.
 - f) *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 by regulations found in 49 CFR §173.326.
 - g) *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 §173.425.

Person shall include any individual, corporation, association, partnership, consortium, firm, trustee, government entity, or legal representative, or one who is an owner, tenant, occupant or party in control of real or personal property onto which or from which hazardous materials release.

Release shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injection, escaping, leaching, dumping or disposing into or upon the environment, which causes danger or harm to the public health or to the environment, including, but not limited to, the release of any material classified as hazardous material by any federal legislation or regulation, by any state legislation or regulation, or by any Township ordinance.

Threatened release shall mean any imminent or impending event, or any false notification, threat, or report, potentially causing but not resulting in a release, but causing the Township to undertake an emergency action.

Township shall mean Onekama Township.

Section 3. RESPONSE.

The requirements of this Ordinance shall not be construed to forbid or forgive any person from using all diligence necessary to control a Hazardous Material Release prior to or subsequent to the notification of the Township or its Designee, especially if such efforts may result in the containment of the Release or the abatement of a hazard to employees or to the general public.

Section 4. LIABILITY FOR COSTS.

Any person causing a Release or Threatened Release or who makes a false report about a Release or Threatened Release which results in an Emergency Action shall be liable to the Township for recoverable costs resulting from the Emergency Action.

The following described persons shall be jointly and severally liable to the Township for the payment of all costs incurred by the Township as a result of such clean up or abatement activity:

Any person whose negligent or willful act or omission proximately caused such a release, discharge, or deposit;

The person who owned or had custody or control of the hazardous material at the time of such release, discharge, or deposit, without regard to fault or proximate cause; and

The person who owned or had custody or control of the container which held such Hazardous Material at the time of or immediately prior to such release, discharge or deposit, without regard to fault or proximate cause.

Section 5. RECOVERY OF COSTS.

Following the Emergency Action, the Township or its Designee shall prepare an itemized record of recoverable costs resulting from the Emergency Action.

Within 45 days of completion of the Emergency Action, the Township or its Designee shall submit a written itemized claim to any person liable under Section 4 of this Ordinance for the total costs incurred by the Township or its Designee for the Emergency Action and a written notice that unless the amounts are paid in full within thirty (30) days after the date of the mailing of the claim and notice, a civil action will be commenced seeking recovery for the stated amount plus any amounts occasioned by such suit. Additional expenses which become known to the Fire Chief following the transmittal of the invoice to the liable person shall be billed in the same manner on a subsequent invoice to the liable person. The Township shall impose a late charge of one percent (1%) per month, or fraction thereof, for any invoice amounts unpaid after thirty (30) days.

For the purposes of this Ordinance, costs of the Township or its Designee shall mean all direct and indirect costs of an Emergency Action and shall include, but are not limited to, the following:

Actual labor cost of personnel, including worker's compensation benefits and fringe benefits, and fire run fees paid to on-call fire fighters. All such personnel-related charges shall commence at the first hour of response to the incident and shall continue until all personnel have concluded incident-related responsibilities.

Administrative overhead including, but not limited to, costs incurred in accounting for all Hazardous Material incident-related expenditures, billing and collection costs, charges related to the incident to the Township imposed by any local, State, or Federal government agency;

Costs of equipment operation are established by the Township Fee Schedule approved, annually, by the Township Board. The fees will be not less than \$500.00 per hour per pumper, water tender (tanker) and additional fire department vehicles and not less than \$300.00 per hour for pump activation. A minimum of \$200.00 per incident will be charged.

Costs of materials including but not limited to replacement costs of personal vehicles and/or any equipment carried on fire apparatus which is rendered unusable by contamination from an incident, disposable personal protection equipment, extinguishing agents, medical supplies, water

purchased from municipal water systems, and meals and refreshments for personnel, as a result of response activities. In addition, the owner, agent or other entity shall be responsible for any decontamination costs for such items described above, as well as items not listed but used during an incident such as but not limited to gas meters and Self-Contained Breathing Apparatus;

Laboratory costs of analyzing samples taken during the Emergency Action;

Medical expenses incurred as a result of response activities;

Costs of any contract labor and equipment including but not limited to rental or purchase of machinery and equipment, and consultant, legal, or engineering fees, as a result of response activities;

All labor, equipment, consulting and all other costs charged to the Township by any pollution control / environmental response entity under contract with the Township for the purpose of responding to any part or all of an Emergency Action on behalf of the Township.

Costs to supervise or verify the adequacy of the cleanup or abatement by others; and

Legal expenses that may be incurred as result of the emergency action, including actions for recoverable expenses pursuant to this Ordinance.

The authority to recover costs under this Ordinance shall not include actual fire suppression services which are normally or usually provided by the Fire and Rescue Unit or other Designee.

Section 6. CIVIL SUIT.

The Township or Designee may bring a civil action for payment of the recoverable expenses against any and all persons liable under this Ordinance. All costs of such suit, including actual attorney fees, shall also be a recoverable cost within the same civil action.

Section 7. CONFLICT WITH STATE OR FEDERAL LAW.

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

Section 8. 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 9. SEVERABILITY.

Should any provision or part of this Ordinance be declared by any court of competent jurisdiction to be invalid or unenforceable, the same shall not effect the validity or enforceability of the balance of this ordinance which shall remain in full force and effect.

Section 10. EFFECTIVE DATE.

This Ordinance shall become effective THIRTY DAYS AFTER DATE OF PUBLICATION. All Ordinances or parts of Ordinances in conflict are hereby repealed.

THOSE VOTING IN FAVOR: Mathieu, Oliver, Hock, Meister, Miller
THOSE VOTING AGAINST: None
THOSE ABSENT OR ABSTAINING: None

ORDINANCE DECLARED PASSED


Helen Mathieu, Clerk

CERTIFICATE

I, Clerk of the Township of Onkama, Manistee County, Michigan, do hereby certify that the foregoing is a true and correct copy of an Ordinance adapted by the Onkama Township Board of Trustees at a regular meeting held on September 12, 2002.

