

Ordinance No. 47

HAZARDOUS SPILLS EXPENSE RECOVERY ORDINANCE COVERT TOWNSHIP, MICHIGAN Eff. March 31, 2001

THE TOWNSHIP OF COVERT ORDAINS:

Sec. 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 and the expense incurred by the taxpayer as a result of the Township or its Designee having to respond in an emergency to protect life, property and the environment when there has been a release of hazardous materials should be recovered from the person responsible for the emergency.

- A. **CFR** shall mean the Code of Federal Regulations.
- B. **Compressed gas** shall mean any material regulated as a compressed gas by the United States Department of Transportation by regulations found in 49 CFR Subsection 173.300.
- C. **Designee** shall mean the Northwestern Regional Hazardous Materials Response Team or such other private agency authorized in writing by the Township to respond to hazardous materials incidents within the Township.
- D. **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 from a release or threatened release of any material into or upon the environment.
- E. **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 subsection 173.53 and subsection 173.88.
- F. **Flammable liquid** shall mean any material regulated as a flammable liquid by the United States Department of Transportation by regulations found in 49 CFR subsection 173.155.
- G. **Flammable solid** shall mean any material regulated as a flammable solid by the United States Department of Transportation by regulations found in 49 CFR subsection 173.150.
- H. **Hazardous material** shall mean any of the following.
 - 1. Any material listed in the list of toxic pollutants found in CFR subsection 401.15, as amended.
 - 2. Any material designated as hazardous material by applicable state law.

Ordinance No. 47

3. Any compressed gas, explosive, flammable liquid, flammable solid, oxidizer, poison or radioactive material.
- I. **Oxidizer** shall mean any material regulated as an oxidizer by the United States Department of Transportation by regulations found in 49 CFR subsection 173.151.
- J. **Person** shall include any individual, corporation, association, partnership, firm, trustee, or legal representative.
- K. **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 subsection 173.326.
- L. **Radioactive material** shall mean any material required by the United States Department of Transportation to have a type A packaging or other special protection to closed transport vehicles, under regulations found in 49 CFR subsection 173.425.
- M. **Release** shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into or upon the environmental, which causes danger or harm to the public health or to the environment, including, but not limited to, the release of material classified as hazardous material by any federal legislation or regulation, by any state legislation or legislation, or by any Township Ordinance.
- N. **Threatened release** shall mean any imminent or impending event potentially causing but not resulting in a release, but causing the Township to undertake an emergency action.

Sec. 3. NOTICE AND RESPONSE.

- A. Any person who has damaged the surface waters, groundwater, soils or atmosphere by the handling or storage of hazardous materials, or who have violated any local, state, or federal environmental laws with respect to hazardous materials, are required to immediately notify the Township.
- B. 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 or subsequent to the notification of the Township, especially if such efforts may result in the containment of the release or the abatement of extreme hazard to the employees or the general public. Delays in reporting releases due to in-house notification of off-site owners or supervisors shall result in penalties. Nothing in this Ordinance shall be construed to exempt or release any person from any other notification or reporting required by any state or federal agency.
- C. The Township, the Township's Designee, Fire Chief, Police Chief, or the Designee of either Chief is authorized to direct an emergency action and the clean up and abatement of any release, or threatened release within the Township.

Ordinance No. 47

Sec. 4. **LIABILITY FOR COSTS.**

- A. Any person causing a release or threatened release which results in an emergency action shall be liable to the Township for the costs resulting from the emergency action.
- B. 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.
 - 1. Any person whose negligent or willful act or omission proximately caused such release or discharge.
 - 2. The person who owned or had custody or control of the hazardous material or the material at the time of such release, discharge, or deposit, without regard to fault or proximate cause; and
 - 3. 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.

Sec. 5. **RECOVERY OF COSTS.**

- A. The Township or its Designee shall keep an itemized record of costs resulting from an emergency action.
- B. The Township or its Designee shall submit a written itemized claim to the responsible person for the total costs incurred by the Township or its Designees 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.
- C. For the purposes of this Ordinance, costs of the Township or its Designee shall mean all direct and indirect costs and shall include, but are not limited to the following:
 - 1. Actual labor cost of personnel, including workers compensation benefits and fringe benefits;
 - 2. Administrative overhead;
 - 3. Costs of equipment operation;
 - 4. Costs of materials;
 - 5. Laboratory costs of analyzing samples taken during the emergency action;
 - 6. Medical expenses incurred as a result of response activities;
 - 7. Costs of any contract labor;

Ordinance No. 47

8. Costs to supervise or verify the adequacy of the cleanup or abatement by others;
and
9. Legal expenses that may be incurred as a result of the emergency action,
including actions for recoverable expenses pursuant to this Ordinance.

D. The authority to recover costs under this Ordinance shall not include actual fire suppression services which are normally or usually provided by the Fire Department.

Sec. 6. CIVIL SUIT.

The Township or Designee may bring a civil action or 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 recoverable cost within the same civil action.

Sec. 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.

Sec. 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 approved by law or ordinance.

Sec. 9. EFFECTIVE DATE.

This Ordinance shall become effective THIRTY DAYS AFTER DATE OF PUBLICATION.

ADOPTED: February 13, 2001

PUBLISHED: March 2, 2001

EFFECTIVE: March 31, 2001

Dennis C. Palgen,
Covert Township Clerk