

Ordinance #24

An ordinance relating to hazardous substances and waste requiring persons responsible for the storing, handling and transportation of such substances to clean up spills at their own costs, and providing remedies for Fayette County to clean up such spills if the persons responsible fail to do so, and providing penalties for the violation thereof.

BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF FAYETTE COUNTY, IOWA

SECTION 1. PURPOSE In order to reduce the danger to public health, safety and welfare from the storage, transportation, and spills of hazardous substances, these regulations are promulgated to establish responsibility for the removal and cleanup of spills, leakage or release of hazardous substances which create an immediate or potential danger to the public health or safety within the limits of Fayette County.

SECTION 2. DEFINITIONS. For the purpose of this ordinance, these terms have the following meanings:
a. "Hazardous waste" means such wastes as defined in Section 455B.411 Subsection 3(a) and (b), Code of Iowa, 2009.

b. "Hazardous substance" means any substance as defined in Section 455B.411 Subsection 2, Code of Iowa, 2009.

c. "Hazardous condition" means any circumstances as defined in Section 455B.381 Subsection 4, Code of Iowa, 2009

d. "Person having control over a hazardous substance" means a person who at any time produces, handles, stores, uses, transports, refines, or disposes of a hazardous substance the release of which creates a hazardous condition, including bailees, carriers, and any person in control of a hazardous substance when a hazardous condition occurs, whether the person owns the hazardous substance or is operating under a lease, contract, or other agreement with the owner of the hazardous substance, as defined in Section 455.381(7), Code of Iowa , 2009.

e. "Cleanup" means the same as defined in Section 455B.381(1), Code of Iowa 2009.

f. "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical or biological character or composition of a hazardous waste so as to neutralize the waste or to render the waste nonhazardous, safer for transport, amenable for recovery, amenable for storage, or to reduce the waste in volume. "Treatment" includes any activity or processing designed to change the physical form or chemical composition of hazardous waste to render the waste nonhazardous, as defined in Section 455.411B(10), Code of Iowa, 2009.

g. "Incident Commander" means the Chief of his or her duly appointed designee, of the Fire Department where said release or potential release has occurred. The Chief or his or her duly appointed designee may also appoint one or more Fire Chiefs, or Assistant Fire Chief of any municipality or Fire District or Fire Department as his or her temporary deputy, or may delegate the duties of Incident Commander to one or more such Fire Chiefs or Assistant Fire Chiefs, at his or her discretion.

h. "Mitigation" means any action designed to contain, control, stop or eliminate a release or potential release of a hazardous substance or waste or condition.

SECTION 3. MITIGATION AND CLEANUP REQUIRED.

- a. Whenever a hazardous condition is created so that a hazardous substance or waste or a constituent of a hazardous substance or waste has entered or may enter the environment, be emitted into the air, or discharged into any waters, including ground waters, the person having control over a hazardous substance shall alleviate, or cause to alleviate, the condition by cleanup or treatment, as defined by Section 2(e) and 2(f) of this ordinance, and shall restore the affected area to its condition prior to the hazardous condition as far as practicable. The cost of cleanup or treatment shall be borne by the responsible person.
- b. If the person having control over a hazardous substance cannot be located within a reasonable period of time, or if a person having control over a hazardous substance does not cause the cleanup or treatment to begin with a time reasonable in relation to the hazard and circumstances of the incident, the County may, by the Incident Commander, give notice which shall be reasonable considering the character of the hazardous condition. The notice shall state a deadline for accomplishing the cleanup or treatment and state that the County will proceed to procure cleanup or treatment services if the cleanup or treatment is not accomplished within the deadline. The notice shall set forth a reasonable estimate of the cost of cleanup or treatment: and state the person having control over a hazardous substance will be billed for all costs associated with the cleanup or treatment.
- c. If the bill for the above services is not paid within thirty (30) days, Fayette County may proceed, after service of notice, either by certified mail or by one publication in newspapers having general circulation within Fayette County, and hearing before the Board of Supervisors, to obtain payment by all available legal means.
- d. If the costs of mitigation, cleanup or treatment are beyond the capability of the County, the Incident Commander shall proceed pursuant to Section 455.387 Subsection (2), Code of Iowa, 2009, and immediately seek any state or federal resource that may be available for such mitigation, cleanup or treatment.
- e. Whenever a hazardous condition which creates an immediate danger to public health or safety exists and it is necessary to take immediate action to correct this condition in order to protect the public health or safety, the Incident Commander or any Peace Officer may, without prior notice to the responsible person, take any mitigation action necessary to limit the immediate danger to the public health or safety. The responsible person shall be liable for the cost of such mitigation action.

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SECTION 4. LIABILITY FOR MITIGATION AND CLEANUP COSTS. The responsible person shall be strictly liable to Fayette County, or the appropriate City or fire department whose personnel or equipment is involved, for all the following:

- a. The County and City or fire department may incur these costs set forth in Section 3(b) of this Ordinance as.
- b. B. The reasonable costs incurred by the County, and any City or Fire Department, to evacuate persons from the area threatened by a hazardous condition caused by the person having control over a hazardous substance.

- c. C. Reasonable damages for injury to, destruction of, or loss of County property, including but not limited to, parks and roads, resulting from a hazardous condition caused by the person having control over a hazardous substance, including the cost of assessing the injury, destruction or loss.
- d. D. The repair and/or replacement costs for all equipment, material or supplies, lost, contamination or otherwise rendered unusable, including disposal costs; costs of repair or decontamination of equipment; medical expense, and personal injury to personnel responding to the hazardous condition; and all such other costs and expenses of the County or City or Fire Department(s) expended to deal with the hazardous condition.

SECTION 5. NOTIFICATION

- a. Any person manufacturing, storing, handling, transporting, or disposing of a hazardous substance or waste shall notify the Law Enforcement Communication Center via 911 of the occurrence of a hazardous situation as soon as possible, by no later than thirty (30) minutes after the onset of hazardous condition or discovery of the hazardous condition. The Law Enforcement Communication Center shall immediately notify the appropriate Fire Department, the appropriate law enforcement agency, the Fayette County Emergency Management Agency, and the Iowa Department of Natural Resources Spill Hotline.
- b. B. Any county or municipal employee or member of a law enforcement agency, city or township fire department, or ambulance service who discovers a hazardous condition shall immediately notify the Law Enforcement Communication Center, and upon receipt of such notification, the Law Enforcement Communication Center shall proceed in the manner provided in Section 5(a) of this Ordinance.
- c.

SECTION 6. SITE ACCESS. Access to any site, public or private, where a prohibited discharge is indicated or suspected will be provided to the Incident Commander of the fire department, its officers and personnel, and to law enforcement personnel for the purpose of evaluating the threat to the public and for monitoring containment, cleanup and restoration activities.

SECTION 7. INCIDENT COMMANDER. If the circumstance so require, the Incident Commander may:

- a. Order the evacuation of persons to areas away from the site or projected sites of a hazardous condition, and/or
- b. E. Establish zones or other boundaries at, near or projected from the site of a hazardous condition and limit the access to such zones to persons engaged in the mitigation or cleanup of treatment of the hazardous situation.
- c. C. No person shall disobey an order of the incident Commander or any law enforcement official acting under direction of the Incident Commander issued under this Section.

SECTION 8. COUNTY LIABILITY. Except where Fayette County is the responsible person as defined in Section 2(e) of this Ordinance, the County shall not be liable to any person for claims or damages, injuries, or loss resulting from any hazardous condition.

SECTION 9. PENALTY. Any person violating any provision, section, or paragraph of this Ordinance shall be guilty of a simple misdemeanor, and upon conviction be subject to a fine not exceeding \$500.00 or be imprisoned for not more than thirty (30) days. Each day of the violation shall constitute a separate offense.

SECTION 10. SEPERABILITY OF PROVISIONS. It is the intention of the Board of Supervisors that each section, paragraph, sentence, clause, and provision of this Ordinance is separable, and if any such provision is held unconstitutional or invalid for any reason, such decision shall not affect the remainder of this Ordinance or any part thereof other than that affected by such decision.

SECTION 11. REPEALER. All ordinances or parts of ordinance in conflict with this ordinance or inconsistent with the provisions of this Ordinance, are hereby repealed to the extent necessary to give this Ordinance full force and effect.

SECTION 12. EFFECTIVE DATE. This Ordinance shall be in full force and effect from and after passage and publication as provided by law.

PASSED AND ADOPTED this day 12th day of October 2009.