

6-21-1999

ORDINANCE # 200.

TOWNSHIP OF HEMATITE

SECTION I

TITLE

This Ordinance shall be known and may be cited as the "Hazardous Waste Recovery Ordinance" of the **TOWNSHIP OF HEMATITE**.

SECTION II

FINDING AND PURPOSES

The **TOWNSHIP OF HEMATITE** finds that a significant potential exists for responses to incidents involving the release or threatened release of hazardous 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 fire fighting, rescue and emergency medical services and other Township resources. The Township finds that this Ordinance is necessary 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 material incidents.

SECTION III

DEFINITIONS

Unless specifically defined below, words or phrases used in this Ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this Section its most reasonable application:

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

Emergency Response means 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 materials release or threatened release or the clean-up or abatement of same.

Expenses of an Emergency Response means 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 materials incident, including the costs of providing police, fire fighting, rescue services, emergency medical services, containment, storage, clean-up and abatement of all hazardous materials and conditions at the scene of the incident. The costs further include all salaries, wages, or fringe benefits of Township personnel responding to the incident, salaries and wages of Township personnel engaged in the investigation, supervision and report preparation regarding the incident, all salaries, wages

or fringe benefits of personnel of assisting government agencies operation 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 including protective equipment and clothing, 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 equipment, laboratory costs and equipment, services and supplies purchased for any specific evacuation relating to the incident. Additional costs may include decontamination of equipment contaminated during the response; other special services required for the emergency response; costs associated with the services; medical expenses incurred as a result of response activities; legal expenses that may be incurred as result of the emergency response, including efforts to recover expense pursuant to this Ordinance.

Explosive shall mean any material regulation as a class A or class B explosive by the United States Department of Transportation through regulations found in 49 CFR §173.53 and 173.88, and subsequent amendments thereto.

Flammable Liquid shall mean any material regulated as a flammable liquid by the United States Department of Transportation through regulations found in 49 CFR §173.115, and subsequent amendments thereto.

Flammable Solid shall mean any material regulated as a flammable solid by the United States Department of Transportation through regulations found in 49 CFR §173.150, and subsequent amendments thereto.

Hazardous Material means explosives, pyrotechnics, compressed gas, flammable liquid, flammable solid, combustible liquid, oxidizing material, poisonous gas, poisonous liquid, poisonous solid, irritating material, etiological material, radioactive material, corrosive material or liquified petroleum gas and also including, but not limited to, any of the following:

- a. any material listed in the list of toxic pollutants found in 40 CFR §401.15, as amended, or in any other federal law or regulation;
- b. any material designated as hazardous material by state or federal law or regulation, or Township Ordinance; or
- c. any otherwise non-hazardous material released is a hazardous material for the purpose of this Ordinance if its presence causes a potential hazard to vehicular or pedestrian traffic.

Owner means any person having a vested or contingent interest in the premises, real property, personal property, container or vehicle involved in the hazardous 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 §173.151, and any subsequent amendments thereto.

Persons 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 representative, 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 found in 49 CFR §173.326, and any subsequent amendments thereto.

Premises means any lot or parcel of land, exclusive of building, and includes a parking lot, tourist camp, trailer camp, airport, stockyard, junkyard, wharf, pier, public roadway and any other place or enclosure, however owned, used or occupied.

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, and any subsequent amendments thereto.

Release shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing which causes damage or harm to person(s), property, natural resources, the public health or the environment.

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 **TOWNSHIP OF HEMATITE**.

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

SECTION IV **LIABILITY FOR COSTS**

Any person causing or contributing to the causing of a release or threatened release shall be liable to the Township for the expenses of emergency response.

The following persons shall be jointly and severally liable to the Township for the payment of all costs and expenses incurred by the Township as a result of emergency response, clean-up or abatement activity.

- a. Any person whose negligent or willful act or omission proximately causes such release or threatened release;

- b. The owner, operator, occupant or other person responsible for the operation, maintenance and/or conditions of any building, premises, property or vehicle;
- c. The person who owned or had custody or control of the hazardous material or the material at the time of such release or threatened release without regard to fault or proximate cause; and
- d. The person who owned or had custody or control of the container which held hazardous material at the time of or immediately prior to such release or threatened release without regard to fault or proximate causes.

SECTION V
RECOVERY OF COSTS

- a. The expenses of an emergency response shall be a charge against the person(s) liable for the expenses under this Ordinance. The charge constitutes a debt of the person(s) and is collectible by the Township in the same manner as an obligation under contract, express or implied.
- b. The Township personnel and departments involved in an emergency response shall keep an itemized record of recoverable costs resulting from a release or threatened release including and emergency action/response. Promptly after completion of any emergency response, the Township shall certify those expenses to the Township Supervisor.
- c. Costs of the Township shall not include costs of actual fire suppression services which are normally or usually provided by the fire department in situations not involving hazardous materials.
- d. The Township may, within ten (10) days of receiving itemized costs, or any part thereof incurred for an emergency response, submit a bill for those costs by first class mail or personal service to the person(s) 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. 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, by resolution of the Township Board, shall have the right and power to add all emergency response costs to the tax roll of such property involved in the hazardous 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 X
EFFECTIVE DATE

This Ordinance shall take effect and being force on and after the 21 day of June, 1999.

TOWNSHIP OF HEMATITE

Dated: 6/21/99

By: [Signature]
Its Supervisor

Dated: 6/21/99

By: Dawn L Harttula
Its Clerk

I, Dawn L Harttula Township Clerk for Hematite Township, certify that the above Ordinance Number 200 is a true and complete copy of said ordinance adopted by the Hematite Township Board on June 21 1999, by and signed by Dawn L Harttula, Hematite Township Clerk. I further certify that the original of this ordinance has been inserted in the Township Ordinance Book on June 21, 1999.

Dawn L Harttula
Township Clerk

NOTICE OF ADOPTION OF ORDINANCE

On this 21 day of June, 1999, the Township of Hematite adopted Ordinance Number 200 entitled "Hazardous Waste Recovery Ordinance" that provides for and regulates the right for recoupment of costs incurred by the Township of Hematite in providing emergency response to the release or threatened release of explosives, flammable liquid, flammable solid, hazardous material, oxidizing material, poison and radioactive material as those terms are defined in the ordinance, assigns liability for costs incurred and allows for recovery of costs incurred. The Ordinance shall become effective July 1st, 1999 and a summary of the Ordinance is as follows:

- Section I Title
- Section II. Finding and Purpose
- Section III Definitions
- Section IV. Liability for Costs
- Section V Recovery of Costs
- Section VI. Conflict with State or Federal Law
- Section VII Non-Exclusive Remedy
- Section VIII. Severability
- Section IX. Savings Clause
- Section X Effective Date

A true copy of the entire ordinance is available for inspection and/or copying at the Hematite Township Hall

Date: 6/21/99

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A true copy of the entire ordinance is available for inspection and/or copying at the Hematite Township Hall located at Amasa, Michigan 49903.

Dated: 6/21/99

HEMATITE TOWNSHIP
By: Dawn L. Hanttula
Its Clerk