

**STATE OF MICHIGAN
COUNTY OF HURON
VILLAGE OF PORT AUSTIN**

Ordinance # 119-09

An ordinance regulating hazardous materials cost recovery.

Where as the Village of Port Austin adopts:

Section 1. FINDINGS AND PURPOSE: The Village of Port Austin hereby finds and declares the purpose of this ordinance to be as follows:

- a. A significant potential exists for responses to incidents involving the release or threatened release of hazardous materials.
- b. That such incidents create a great likelihood of personal injury, property damage and environmental contamination.
- c. The control and abatement of such incidents places a significant financial and operational burden upon the Village of Port Austin and or Port Austin Township's fire fighting, rescue, emergency medical services and other emergency services and resources.
- d. This ordinance is necessary to establish the liability for such incidents and to establish a policy and methods which will allow the Village of Port Austin and Port Austin Township to recover costs and expenses associated with emergency responses to hazardous material incidents in the Village of Port Austin.

Section 2. DEFINITIONS: The following definitions will apply in the interpretation, administration and enforcement of this Ordinance.

- a. "Village" shall mean the Village of Port Austin.
- b. "Township" shall mean the Township of Port Austin.
- c. "Emergency Response" shall mean the providing, sending, and or utilizing of fire fighting, emergency medical and rescue, public safety, and public works services by the Village, Township or by a private industrial entity, corporation, or other assisting government agency operating at the request or direction of the Village, 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.
- d. "Expenses of an Emergency Response" shall mean the direct and reasonable costs incurred by the Village and or Township when making an emergency

response to a hazardous materials incident, including the cost of 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 the Village and or Township personnel responding to the incident; salaries and wages of Village and or Township personnel engaged in the investigation, supervision and report preparation regarding the incident; 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 witness at any court proceedings in relation thereto.

Costs shall include, but are not limited to, such items as disposable materials and supplies used during the response to said incident, 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, but are not limited to, 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 a result of the emergency response including efforts to recover expenses pursuant to this Ordinance.

Costs shall not include costs of actual fire suppression services that are normally or usually provided by the fire department in situations not involving hazardous materials.

- e. "Hazardous Material" shall mean explosives, pyrotechnics, compressed gas, flammable liquid, flammable solid, combustible liquid, oxidizing material, poisonous gas, poisonous liquid, poisonous solid, etiological material, radioactive material, corrosive material, or liquefied petroleum gas and any material, substance or mixture designated as hazardous and or toxic by State or Federal law or regulation and any otherwise non-hazardous material, substance or mixture if its presence causes a potential hazard to vehicular or pedestrian traffic.
- f. "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 materials incident, including but not limited to, any duly authorized agent or attorney, purchaser devisee, or fiduciary of a person having said vested or contingent interest.
- g. "Person" shall mean an individual, firm, joint venture, partnership, corporation, limited liability company, club 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 of the fiduciary, and includes all legal representatives, heirs, successors and assignees thereof.

- h. "Premises" shall mean any lot or parcel of land, exclusive of building, and includes a parking lot, tourist camp, trailer camp, airport, stockyard, junkyard, dock, pier, public roadway, and any other place or enclosure, however owned, used or occupied.
- i. "Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of a hazardous material into the environment or in any way which causes damage or harm to person(s), property, natural resources.
- j. "Threatened Release" shall mean any imminent or impending event potentially causing but not necessarily resulting in a release that causes the Village to undertake emergency response.
- k. "Vehicle" shall mean any mode which is used as an instrument of conveyance, including but not limited to motor vehicles, railroads, boats and aircraft.

Section 3. LIABILITY FOR COSTS: Any person causing or contributing to a release or threatened release shall be liable to the Village and Township for the expenses of an emergency response.

- a. The following persons shall be jointly and severally liable to the Village and or Township for the payment of all costs and expenses incurred by the Village and or Township as a result of an emergency response, clean-up or abatement activity:
 - 1. Any person whose negligent or willful act or omission proximately caused or contributed to such release or threatened release;
 - 2. The owner, operator, occupant, or other person responsible for the operation, maintenance and or condition of any building, premises, property, or vehicle which was the cause of a release or threatened release;
 - 3. The person who owned, transported, or had custody or control of the hazardous material at the time of such release or threatened release without regard to fault or proximate cause; and
 - 4. The person who owned, transported, or had custody or control of the container which held hazardous material at time of or immediately prior to such release or threatened release without regard to fault or proximate cause.

- b. The provisions of this section shall not apply to the Village and or Township or any of its officers, agents or employees with respect to any release or threatened release on or from any Village owned or operated building, premises, property or vehicle and caused by its officers, agents or employees.

Section 4. RECOVERY OF COSTS:

- a. A person liable for costs of an emergency response shall be billed for the expenses of the emergency response. This bill constitutes a debt of the person(s) and is collectible by the Village and or Township in the same manner as an obligation under contract express or implied.
- b. The Village and or Township personnel shall keep an itemized record of recoverable costs resulting from a release or threatened release including an emergency response.
- c. The Village and or Township shall submit a bill for those extra costs by first class mail or personal service to the person(s) liable for the expenses as enumerated under this Ordinance. The bill shall include all recoverable costs. 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. The Village and or Township shall have the right to bring or commence an action in any court of competent jurisdiction to collect said costs.
- d. The expenses of an emergency response shall constitute a lien against the real property upon which the response activity occurred if the owner, operator or owner's lessee caused or contributed to the release, and if not paid within sixty (60) days after payment is due, shall be reported by the Clerk to the Assessor who shall spread such amounts against the person(s) or descriptions of the real property chargeable therewith on the next roll for the collection of Village and or Township taxes, and the liens thereon shall be enforced in the same manner thereafter as provided by law for delinquent and unpaid Village and or Township taxes.

Section 5. REPEAL: All ordinances or parts of ordinances of the Village of Port Austin inconsistent herewith are hereby repealed so far as they may be inconsistent with the provisions of this ordinance.

Section 6. EFFECTIVE DATE: This ordinance shall become effective upon publication.

Motion by: Rene Nichols

Seconded by: Bill Hogan

Yeas: Bruce, Hogan, Nichols, Murawski, Ranger, Loewe

Nays: 0

Absent: 0

Abstain: 0

Ordinance Adopted on the 13th day of April, 2009.

Thomas Rapson, Clerk

A. R. Loewe, President

Clerk Certification

I Thomas Rapson, Clerk of the Village of Port Austin, certify that:

- 1) A regular meeting on the ordinance was conducted in the Village Hall on the April 27th, 2009.
- 2) The ordinance was adopted on the 13th day of April, 2009.
- 3) The ordinance or a synopsis thereof was published on the day of , 2009.