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DOCUMENT No. 3831 FILED FOR RECORD THE 20 DAY OF January 1991 AT 9:45 STATE OF IOWA, JASPER COUNTY. Recorder Nancy Ketter
 RECORDING FEES no fee .M. BOOK 956 PAGE 183 Deputy
 TRANSFER FEES _____ O'CLOCK _____

JASPER COUNTY, IOWA

#16A

V-II, AMENDED

AN ORDINANCE AMENDING THE CODE OF ORDINANCES FOR THE JASPER COUNTY, IOWA REQUIRING THAT PERSONS RESPONSIBLE FOR THE STORING, HANDLING AND TRANSPORTATION OF HAZARDOUS MATERIALS SHALL, AT THEIR OWN COST, CLEAN UP ANY LEAKS OR SPILLS OF THOSE MATERIALS, AND PROVIDING REMEDIES FOR THE COUNTY TO CLEAN UP SPILLS IF THE RESPONSIBLE PARTY FAILS TO DO SO, AND TO RECOVER THE COSTS FROM THE RESPONSIBLE PERSON OR PERSONS FOR THE COUNTY.

BE IT ORDAINED BY THE BOARD OF SUPERVISORS OF JASPER COUNTY:

Section 1. Purpose. In order to reduce the danger to public health, safety, and welfare, these regulations are promulgated to establish responsibility for the treatment, removal, and cleanup of hazardous materials leaks and spills with in the county.

Section 2. Definitions. For the purpose of this ordinance these words have the following meaning:

1. "Hazardous substance" means any substance or mixture of substances that presents a danger to the public health or safety and includes, but is not limited to, a substance that is toxic, corrosive, or flammable, or that is an irritant or that generates pressure through decomposition, heat or other means. "Hazardous substances" may include any hazardous waste identified or listed by the administrator of the United States Environmental Protection Agency under the Solid Waste Disposal Act of 1976, or any toxic pollutant listed under subsection 307 of the Federal Water Pollution Control Act as amended to January 1, 1977, or any hazardous materials designated by the Secretary of Transportation under the Hazardous Material Transportation Act. (455.B381(1), Code of Iowa).

2. "Hazardous waste" means those wastes which are included by the definition in Iowa Code, Sec. 455B.411(3), Code of Iowa. In brief, a hazardous waste means a waste or combination of wastes that, because of its quantity, concentration, biological degradation, leaching from precipitation, or physical, chemical, or infectious characteristics, has either the following effects:

a. Causes, or significantly contributes to an increased in mortality or an increase in serious irreversible, or incapacitating reversible illness.

b. Poses a substantial danger to human health or the environment. "Hazardous waste" may include but is not limited to wastes that are toxic, corrosive or flammable or irritants, strong sensitizers or explosives.

c. "Hazardous waste" does not include:

(1) Agricultural wastes, including manures and crop residues that are returned to the soil as fertilizers or soil conditioners.

(2) Source, special nuclear, or by-product material as defined in the Atomic Energy Act of 1954, as amended to January 1, 1979. (455B.411(2), Code of Iowa).

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3. "Hazardous condition" means any situation involving the actual, imminent or probable spillage, leakage, or release of a hazardous substance or hazardous waste onto the land, into a water of the state or into the atmosphere which creates an immediate or potential danger to the public health or safety. (455B.381(2), Code of Iowa.

4. "Responsible person" means a person who, at any time, produces, handles, stores, uses, transports, refines, or disposes of a hazardous substance or hazardous release of which creates a hazardous condition, including bailees, carriers, and any other person in control of a hazardous substance or waste when a hazardous condition occurs, whether the person owns the hazardous substance or waste, or is operating under a lease, contract, or other agreement with the legal owner of the hazardous substance or waste. (455B.381(8), Code of Iowa).

5. "Cleanup" means actions necessary to contain, collect, control, identify, analyze, cleanup, treat, disperse, remove, or dispose of a hazardous substance or waste, and restoration of the affected environment. (455B.381(6), Code of Iowa).

6. "Person" means an individual, corporation, firm, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

7. "Treatment" means a method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of a hazardous substance so as to neutralize it or to render the substance non-hazardous, save for transport, amenable for recovery, amenable for storage, or to reduce it in volume. Treatment includes any activity or processing designed to change the physical form or chemical composition of hazardous substance to render it non-hazardous.

8. "Impoundment" means to seize and keep in legal custody.

Section 3. Cleanup Required.

1. Whenever a hazardous condition is created so that a hazardous substance or waste or a constituent of the hazardous waste or substance may enter the environment or be emitted into the air or discharged into any waters, including ground waters, the responsible person shall cause the condition to be remedied by a cleanup, as defined by subsection 2.5, as rapidly as feasible to an acceptable safe condition, and restore the affected area to its state prior to the hazardous condition as far as practicable. The cost of the cleanup shall be borne by the responsible person.

2. If the responsible person does not cause the cleanup to begin in a reasonable time in relation to the hazard and circumstances of the incident, the County may, by an authorized officer give reasonable notice based on the character of the hazardous condition, setting a deadline for commencing and accomplishing the cleanup or the County may proceed to procure cleanup services.

3. If the bill for those services is not paid within thirty days, the city attorney shall proceed to obtain payment by all legal means. If the cost of the cleanup is beyond the capacity of the County to finance, the authorized officer shall report this condition to the Board of Supervisors and so advise that the County immediately seek any state or federal funds available for the cleanup.

Section 4. Liability for Cleanup Costs.

1. The responsible person shall be strictly liable to the County for all of the following:

a. The reasonable cleanup costs incurred by the County as a result of the failure of the responsible person to remove a hazardous substance or waste involved in a hazardous condition.

b. The reasonable costs incurred by the County to evacuate people from the area threatened by a hazardous condition caused by the person.

c. The reasonable damages to the County for the injury to, destruction of, or loss of County property, including parks and roads, resulting from a hazardous condition caused by that person, including the costs of assessing the injury, destruction or loss.

2. Impoundment of the vehicle, the tractor, its trailers or cars, its containers and appurtenances, and all merchandise or other goods being shipped by the vehicle shall be within the power of the emergency management office of the county, the Sheriff or his deputies, and the Mayor and the council of the city to impose if written, telegraphic or other binding proof of acceptance of responsibility for damages or cleanup of spilled materials and restoration of the environment has not been obtained and in hand for any of the above mentioned authorities.

Section 5. Notifications.

1. A person manufacturing, storing, handling, transporting, or disposing of a hazardous substance or waste shall notify the JASPER COUNTY DISPATCHER of the occurrence of a hazardous condition as soon as possible:

a. Notification shall be as immediate as is humanly possible and available communications allow if the hazardous condition exposes any of the population of the county to immediate danger or potential escalation of danger in the near future.

b. If the hazardous condition is not immediately life threatening the notification should proceed as soon as possible but not later than six (6) hours after the onset of the hazardous condition or its discovery.

2. The person or persons responsible for the spilled or released hazardous substance or waste shall, on their own initiative, fulfill the requirements of state law for notification of the State Emergency Response Commission through the Department of Natural Resources.

a. The responsible person shall make their own contact with the Department of Natural Resources for the spill or release notification. Notification of the local emergency planning committee through the county dispatcher constitutes local notification only.

b. Any contact by the county dispatcher or other county officials or authorities with the Department of Natural Resources does not constitute, imply, convey or carry any notification of the state authorities for the responsible person.

Section 6. Law Enforcement Authority.

1. If the circumstances require, the Sheriff or the officers of his department, or the county emergency program manager may:

a. Evacuate persons from their homes to areas away from the hazardous condition site.

b. Establish perimeters or other boundaries at or near the hazardous condition site and limit access to the site to emergency personnel, including cleanup personnel, for as long as is deemed necessary by either the incident commander or the Sheriff.

c. Impound any vehicle or carrier of hazardous materials involved in a spill or release until such time that legally binding assurances have been received from the carrier or manufacturer assuming full responsibility for all the costs of the cleanup of the damaged caused and the restoration of the environment.

d. No person shall disobey any lawful order issued by the Sheriff, his deputies, or other law enforcement or peace officers involved in the incident.

Section 7. Liability.

The County shall not be liable to any persons for claims of damages, injuries, or losses resulting from any hazardous condition, except if the county is the responsible person as defined in section 2.5

Section 8. Penalty.

Any person violating any provision, section, or paragraph of this ordinance shall be guilty of a misdemeanor, and on conviction be subject to a fine of not more than \$100.00 or be imprisoned for not more than 30 days. Each day a violation occurs shall constitute a separate offense.

Section 9. Severability of Provisions. It is the intention of the County that each section, paragraph, sentence, clause and provision is severable, and if any provision is adjudged invalid or unconstitutional for any reason, such adjudication shall not affect the validity of the ordinance as a whole nor any part thereof not adjudged invalid or unconstitutional.

Section 10. When Effective. This ordinance shall be in effect after its final passage, approval, and publication as provided by law.

Passed by the Board of Supervisors on the 22nd day of January, 1990, and approved this day 22nd of January, 1990.

Howard Peters Jr.
Chair, Jasper County Board of Supervisors

Attest:

Linda Desjardis
Secretary to the Board

Don Van Alstyne
Member, Jasper County Board of Supervisors

Member, Jasper County Board of Supervisors