

EVELINE TOWNSHIP
HAZARDOUS SPILLS EXPENSE RECOVERY ORDINANCE
Ordinance No. 0308 of 2011

THE TOWNSHIP OF EVELINE ORDAINS:

Section 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 taxpayers 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.

Section 2. Definitions. As used in this Ordinance,

- (a) "CFR" means the Code of Federal Regulations.
- (b) "Compressed gas" means any material regulated as a compressed gas by the United States Department of Transportation by regulations found in 49 CFR §173.300.
- (c) "Designee" means the Northwestern Regional Hazardous Materials Response Team or such other public or private agency authorized in writing by the Township to respond to hazardous materials incidents within the Township.
- (d) "Emergency action" means 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 hazardous material into or upon the environment.
- (e) "Explosive" means any material regulated as a class A or class B explosive by the United States Department of Transportation by regulations found in 49 CFR §173.53 and §173.88.
- (f) "Flammable liquid" means any material regulated as a flammable liquid by the United States Department of Transportation by regulations found in 49 CFR §173.115.
- (g) "Flammable solid" means any material regulated as a flammable solid by the United States Department of Transportation by regulations found in 49 CFR §173.150.
- (h) "Hazardous material" means any of the following:
 - (1) Any material listed in the list of toxic pollutants found in 40 CFR §401.15, as amended.
 - (2) Any material designated as hazardous material by applicable state law.
 - (3) Any compressed gas, explosive, flammable liquid, flammable solid, oxidizer, poison or radioactive material.
- (i) "Oxidizer" means any material regulated as an oxidizer by the United States Department of Transportation by regulations found in 49 CFR §173.151.
- (j) "Person" means an individual, firm, corporation, association, partnership, limited liability company, or other legal entity.
- (k) "Poison" means 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 §173.326.

- (l) "Radioactive material" means 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.
- (m) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injection, 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 any material classified as hazardous material by any federal legislation or regulation, by any state legislation or regulation, or by any Township ordinance.
- (n) "Threatened release" means any imminent or impending event potentially causing but not resulting in a release, but causing the Township to undertake an emergency action.
- (o) "Township" means Eveline Township.

Section 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 has violated any local, state or federal environmental laws with respect to hazardous materials, shall immediately notify the Township or its designee.
- (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 to the Township or its designee, 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 Supervisor, the fire chief with jurisdiction in the area of the release or threaten release, or the designee of either, is hereby authorized to direct an emergency action and the clean up and abatement of any release or threatened release of hazardous material within the Township.

Section 4. Liability for Costs.

- (a) Any person who causes or contributes to a release or threatened release of hazardous material which results in an emergency action shall be liable to the Township for the recoverable 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, discharge or deposit;
 - (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.
- (c) The Township shall have a lien for all recoverable costs described in Section 5 against the property of any Person liable for such costs under this Section. In addition to the remedies set

forth in Section 5, such lien shall be enforceable in the manner prescribed by the general laws of the State providing for the enforcement of liens for unpaid taxes.

Section 5. Recovery of Costs.

- (a) The Township or its designee shall keep an itemized record of recoverable 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 designee 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, the Township will file a civil action seeking recovery of 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;
 - (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.

Section 6. Civil Suit.

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

Section 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 the release or threatened release of hazardous material from engaging in remediation activities or paying the cost thereof, or both.

Section 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 provided by law or ordinance.

Section 9. Repealer

The previous Eveline Township Hazardous Spills Expense Recovery Ordinance enacted by the township board on September 10, 2002 is hereby repealed in its entirety.

Section 10. Effective Date.

This Ordinance shall become effective on the day following its publication in a newspaper of general circulation within the township.

EVELINE TOWNSHIP

By: John Vron dran, Supervisor

By: Michelle Johnson, Clerk