

THE CHARTER TOWNSHIP OF GARFIELD

ORDINANCE NO. 39

HAZARDOUS SPILLS EXPENSES RECOVERY

THE CHARTER TOWNSHIP OF GARFIELD  
GRAND TRAVERSE COUNTY, MICHIGAN  
ORDAINS:

Section 1: Intent: The Township Board for the Charter Township of Garfield has found that surface waters, groundwater, soils, vegetation, and atmosphere within the Township of Garfield may be susceptible to damage from the handling, storage, use processing and disposal of hazardous materials. The Township Board has also found that the expenses incurred by taxpayers as a result of the Township or its Designee having to respond in an emergency to protect life, property, and the environment in the event of a release of hazardous materials should be recovered from the person responsible for the release.

Section 2: Definitions:

CFR means the Code of Federal Regulations

COMPRESSED GAS means any material regulated as a compressed gas by the United States Department of Transportation, by regulations founded in 49 CFR Sec. 173.300.

DESIGNEE means any public or private agency authorized in writing by the Township to respond to hazardous materials incidents within the Township.

EMERGENCY ACTION means all of the activities conducted in order to prevent or mitigate injury to human health or to the environment within the Township from a release or threatened release of any materials into or upon the environment.

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 Sec. 173.53 and Sec. 173.88.

FLAMMABLE LIQUID means any material regulated as flammable liquid by the United States Department of Transportation, by regulations found in 49 CFR Sec. 173.115.

FLAMMABLE SOIL means any materials regulated as a flammable solid by the United States Department of Transportation by regulations found in 49 CFR Sec. 173.150.

HAZARDOUS MATERIALS means any of the following:

- (a) Any material listed in the list of toxic pollutants found in 40 CFR Sec. 401.15, as amended.
- (b) Any material designated as hazardous material by

applicable state law.

- (c) Any compressed gas, explosive, flammable liquid, flammable solid, oxidizer, poison or radioactive material.

OXIDIZER means any material regulated as an oxidizer 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 Sec. 173.425.

PERSON shall include any individual, corporation, association, partnership, firm, trustee, or legal representative.

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 Sec. 173.326.

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 Sec. 143.425.

RELEASE means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injection, escaping, leaching, dumping or disposing into or upon the environment, 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.

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.

TOWNSHIP means the Township of Garfield or its Designee.

Section 3: Notice and Response

- (a) Any person who has damaged the surface waters, groundwater, soil 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 of such damage.
- (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, 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. 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 Fire Chief for Grand Traverse County Metro Fire Department, or the Township's Designee, are each authorized to direct an emergency action and the clean up and abatement of any release, or threatened release, within the Township.

Section 4. Liability for Costs

- (a) Any person causing or contributing to the causing of a release or threatened release shall be liable to the Township for the recoverable costs referred to herein.
- (b) The following described persons shall be jointly and severally liable to the Township or its Designee for the payment of all costs incurred by the Township or its Designee as a result of such clean up or abatement.
  - (1) Any person whose negligent or wilful 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.

Section 5. Recovery of Costs.

- (a) The Township or its Designee shall keep an itemized record of recoverable costs resulting from a release or threatened release, including 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 Designees related to the release or threatened release and any 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, a civil action will be commenced seeking recovery for 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 of an emergency action and shall include but not be limited to the following:

- (1) Actual labor costs of personnel, including workers compensation benefits and fringe benefits;
  - (2) Administrative overhead;
  - (3) Costs of equipment operations;
  - (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 release or threatened release, including actions for recoverable costs pursuant to this ordinance.
- (d) Costs recovered related to the emergency action incurred by the Township's Designee shall be transferred to the Designee as soon as possible.

Section 6. Civil Suit The Township or its Designee may bring a civil action for payment of the recoverable costs against any and all persons liable under this ordinance. All costs of such suit, including actual attorney fees, shall also be a recoverable costs 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 release or threatened releases from engaging in remediation activities or paying the cost thereof, or both.

Section 8. Non-exclusive 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. Effect and Interpretation of Ordinance. All ordinances and resolutions, and parts thereof, which conflict with any of the terms of this ordinance are hereby rescinded. In the case of conflict between this ordinance and any such ordinances or resolutions, this ordinance shall control. The catch line headings which precede each section of this ordinance are for convenience in reference only and shall not be taken into consideration in the construction or interpretation of any of the provisions of this ordinance.

This Ordinance shall take effect thirty (30) days after publication as required by law following adoption by the Township Board.

GARFIELD TOWNSHIP ORDINANCE BOOK

ORDINANCE CERTIFICATE

STATE OF MICHIGAN  
TOWNSHIP OF GARFIELD  
COUNTY OF GRAND TRAVERSE

I, Kay Jacobs, the undersigned, being the duly elected and qualified Clerk of the Charter Township of Garfield, do hereby certify the attached Garfield Township Ordinance No. 39, Hazardous Spills Expenses Recovery Ordinance is a true and correct copy as adopted by said Township Board at a regular meeting of the said Board legally held and called on the 29th day of June, 2000.

I do further certify the said Ordinance No. 39 is effective as of August 8, 2000 and was published within 30 days of its adoption on July 8, 2000 in the Traverse City Record Eagle, a newspaper of general circulation in said Township

I do further certify that the member of the Township Board voted upon said Ordinance No. 39 as follows:

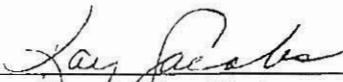
For the Ordinance: Lee Wilson, Kay Jacobs, Judy McManus, Brad Barnes,  
John Klingel Smith, Leo Strait

Against the Ordinance: None

Absent and excused: Jim Harvey

I further certify the said Ordinance No. 39 was duly filed in the Garfield Township Book of Ordinance within one week after publication thereof, said Ordinance being appended to the Garfield Township Book of Ordinances.

IN WITNESS WHEREOF, I have hereto set my hand this 8th day of August, 2000.

  
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Kay Jacobs, Clerk