

ORDINANCE ESTABLISHING SUBSTANCE RELEASE

1) **Declaration of Intent**

- a) **Cleanup.** Means an operation where any solid, liquid, vaporous, or gaseous substance that creates a known, potential or suspected material, safety or health hazard, public nuisance, or an deleterious effect upon the environment is removed, contained, incinerated, neutralized, stabilized, cleared up, or in any manner processed, handled or disposed of with the primary goal of restoring the site to its pre-incident condition or, secondarily, to make the site harmless to people and the environment. This language is consistent with the definition of clean-up operation in 29 CFR 1910.120.
- b) **Emergency Response.** Means a response effort by trained employees from outside the immediate incident area or by other designated responders to a known, potential, suspected release that results, or is likely to result, in an uncontrolled release of a known, potential or suspected material, safety, health or environment hazard. The intent of defining emergency response in this section is to allow trained personnel to implement and coordinate assessment, containment, clean-up and restoration operations of substance releases within an incident command system in accordance with 29 CFR 1910.120.
- c) **Entity.** Means each and every individual, agent, firm, company, partnership, corporation, business establishment, or other enterprise.
- d) **Strict Liability.** Means liability without fault. Specifically, each and every entity responsible for containment of a solid, liquid, vaporous or gaseous substance at the point of release into the ecosystem of the Town of Hartland, including owners, controllers, and possessors of those substance, shall assume joint and several responsibility for pecuniary liabilities of those releases for containment, clean-up, restoration expenses and associated administrative fees, legal fees and court costs. The intent of incorporation strict liability in this section is to reject matters of care, negligence, knowledge, ignorance, good faith, bad faith, or any other justification as cause or reason for being a responsible entity in a substance release incident.
- e) The Town of Hartland acts pursuant to authority granted in the Wisconsin Statutes, including the power set forth in s.61.34 to regulate matters affecting the health, safety and welfare of its residents and owners.

- 2) **Emergency Response.** The release into the ecosystem of the Town of Hartland of any solid, liquid, vaporous, or gaseous substance that creates a known, potential or suspected material, safety, health or environmental hazard, or public nuisance within the Town of Hartland, except those occurring during sanctioned waste disposal, hazardous material collection or landfill activities, shall be considered such a hazard, unless determined by the on-scene incident commander, and be a condition that warrants an emergency response.

- 3) **Containment, Clean-up and Restoration.** The entity responsible for containment of a solid, liquid, vaporous or gaseous substance at the point of release into the ecosystem of the Town of Hartland, including owners, controllers, and processors of those substances, except those specifically sanctioned to perform waste disposal, hazardous materials collection or landfill activities, which presents a known, potential or suspected material, safety, health, or environmental hazard or public nuisance, shall begin immediate actions to clean and clean-up the offending substance and restore the site to its original condition upon direction of any emergency management, law enforcement or fire department representative completing the requirements of this subsection in a time-frame that is acceptable to the incident commander, emergency management, law enforcement or fire department representative having jurisdictional authority, such public official(s) may order containment, clean-up and site restoration actions to be taken by public or private agencies.
- 4) **Strict Liability.** No person or entity shall release into the ecosystem of the Town of Hartland any solid, liquid, vaporous or gaseous substance that creates a known, potential or suspected material, safety, health or environmental hazard, or public nuisance within the Town of Hartland, except those occurring during sanctioned waste disposal, hazardous material collection or landfill activities. The entity responsible for containment of a solid, liquid, vaporous or gaseous substances at the point of release into the ecosystem of the Town of Hartland, including owners, controllers, and possessors of those substances, shall be strictly liable, jointly and severally, for all reasonable and necessary expenses, as determined by the Village of Bonduel Fire Department, or the Shawano County Emergency Government, for those releases, per sub.(3), plus legal fees and court costs associated with enforcement and collection activities under this section.
- 5) **Reimbursement.** Agencies involved in the containment, clean-up and restoration of substance releases shall be allowed to recoup reasonable necessary expenses for those activities, including, but not limited to personnel-hours, equipment-hours, supplies, equipment losses, administrative costs, legal fees, and court costs, per sub.(3). Agencies seeking reimbursement under this section shall develop charge-back criteria for substance release response operations and submit that criteria to the Shawano County Emergency Government for claims stating their expense to the responsible entity with a copy to the Shawano County Emergency Government within 30 days of the incident date. Claims for reimbursement received after 30 days of the incident date may not be reviewed or approved by the Shawano County Emergency Government, except in cases of protracted site restorations or extenuation circumstances, as determined by the Shawano County Emergency Government shall review claims submitted in accordance with this subsection and determine those expenses that were reasonable and necessary under sub.(3). The agencies seeking reimbursement shall provide those entities that are strictly liable with written notice of final determinations under this subsection. If an individual or entity receiving notice objects to the amount of claimed expenses, that individual or entity may petition the Shawano County Emergency Government review its determinations. Such requests must state specific objections to claimed expenses and offer concise rationale for those objections. The Shawano County Emergency Government may modify its determination and shall notify the entity of the results of its expenses for processing claims under this section. The entity that is strictly liable under sub.(3) shall make direct reimbursement to each agency that submitted a claim in accordance with this subsection.
- 6) **Site Access.** Access to any site, public or private, where there is a known, potential or suspected substance release will be provided to the incident commander, emergency management, law enforcement or fire department representative having jurisdictional authority for purposes of implementing and coordinating assessment, containment, clean-up, and restoration operations.

This authorization is intended to qualify any such officer or agent for immunity from trespass under Wisconsin law, including s.939.45.

7) **Public Protection.** Should any substance release occur that indicate a material, safety, health or environmental hazard to the public or any person or persons at, near, or around the incident site and the situation appears to be so critical that immediate action must be taken to protect safety, health, or the environment, the incident commander or emergency government management, law enforcement or fire department representative having jurisdictional authority on the scene may order an evacuation of the area or take other appropriate measures, as determined necessary. Personnel involved in the containment, clean-up, and site restoration of substance releases per sub.(3) shall be trained to the standards required for their functional responsibilities, except that such personnel shall be allowed to perform necessary defensive actions upon the release of substances per sub.(3) to a point where such releases are controlled, contained or otherwise not presenting an unreasonable safety, health or environmental risk and to a point where personnel health and safety of the responders is not placed at unnecessary risk.

8) **Enforcement.** The chief law enforcement official of any designated representative of jurisdiction shall have authority to issue citation for violations of this section. Citations shall be in a form that is in accordance with ss66.119, Wis. Statutes.

Where appropriate, the Town of Hartland may take court enforcement action, including the request for an injunction or other order as an enforcement tool, with the costs of such action assessed against the responsible party(ies).

9) **Forfeitures.** Entities that fail to comply with this section shall be subject to citations. A forfeiture penalty may be assessed for each day of violation.

Penalty range: \$100.00 to \$10,000.00

CITATIONS

Deposit schedule: \$500.00 plus current court costs

Second or later offense
Within two years \$1,000.00 plus current court costs

10) **Civil Liability.** Any entity in violation of this Chapter shall be liable to the Town of Hartland for any expenses incurred by the Town of Hartland for loss or damage sustained by the Town of Hartland or its agents by reason of enforcement and collection under this section.

11) **Enforce ability.** This ordinance shall be effective upon adoption and publications as provided by law. If any portion of this Ordinance is determined by law to be unenforceable, the remainder of the Ordinance shall continue in full force and effect to the maximum extent allowed by law.

12) **Penalty.** No person shall obstruct, hinder or delay the Town of Hartland or any of its agents in the enforcement of an order, rule, regulation or plan issued pursuant to the authority contained in this chapter.

Adopted this 16 day of November 1999

For: 3 Against: Ø

Robert Woldt
Robert Woldt - Chairman

Frank Heller
Frank Heller - Supervisor

Dale Wussow
Dale Wussow - Supervisor

Attested: Wayne D. Moericke
Wayne D. Moericke - Clerk

Substance Release-99-10.wpd