

PENINSULA TOWNSHIP
HAZARDOUS SPILLS EXPENSE RECOVERY ORDINANCE

ORDINANCE NO. 26

THE TOWNSHIP OF PENINSULA ORDAINS:

Section 1: Intent

Surface waters, groundwater, soils, vegetation, and atmosphere inside the Township of Peninsula are susceptible to damage from the handling, storage, use processing and disposal of hazardous material and the expense incurred by the taxpayer as a result of the Township or its Designee having to respond in the 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

CRF 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 found in 49 CFR #173.300.

DESIGNEE means such 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 inside the Township from a release or threatened release of any material 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 175.53 and 173.88.

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

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.

HAZARDOUS MATERIAL means any of the following:

- (a) Any material listed in the list of toxic pollutants found in 40 CFR #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 a type A packaging or other special protection or closed transport vehicles, under regulations found in 49 CFR #173.425.

PERSON shall include any individual, corporation, 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 #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 close transport vehicles, under regulations found in 49 CFR #173.425.

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 Peninsula or its Designee.

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, is required to immediately notify the Township.

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 other person. 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 Peninsula Township Fire Chief or the Township's Designee are authorized to direct an emergency action and the clean up or 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.

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 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.

Section 5: Recovery 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 Designee 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 purpose of this Ordinance, costs of the Township or its Designee shall mean all direct and indirect costs of an emergency action 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 touched during the emergency action;
- (6) Medical expenses incurred as a result of responsive activities;
- (7) Costs of any contract labor;
- (8) costs to supervise or verify the adequacy of the clean up or abatement by others; and
- (9) Legal expenses that may be incurred as a result of the release or threatened release.

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 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 release or threatened release 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 the convenience in reference only and shall not be taken into consideration of interpretation of any of the provisions of this Ordinance.

Section 10: Effective Date

This Ordinance shall take effect 30 days after publication in the Traverse City Record Eagle in accordance with MCLA 41.184.

ROBERT K. MANIGOLD, Supervisor
MONICA A. HOFFMAN, CLERK
Peninsula Township Board
Passed by the Town Board on: February 12, 2002
Prepared in the offices of:
Running, Wise & Ford, P.L.C.
By: Richard W. Ford
Township Attorneys
326 E. State Street, P.O. Box 686
Traverse City, MI 49685-0686

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TO THE RECORD EAGLE:

Please publish on: February 22, 2002

Please send affidavit to: Richard W. Ford

Please send bill to: Monica A. Hoffman, Clerk
Peninsula Township
13235 Center Road
Traverse City, MI 49684

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E-MAILED TO THE RECORD EAGLE ON FEBRUARY 18, 2002